Title: Respiratory Protection (29 CFR part 1910.134).

OMB Number: 1218–0099 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 130,000.

Estimated Time Per Respondent: Time per response ranges from 5 minutes to mark emergency-use respirator storage compartments to 8 hours to develop a written respiratory protection program.

Total Burden Hours: 1,166,092.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The purpose of this standard and its information collection is designed to provide protection for employees from workplace atmospheric contamination. The standard requires employers to develop a written respiratory protection program, to inspect and certify emergency-use respirators, and mark emergency-use respirator storage compartments.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–27735 Filed 10–17–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

New Mexico State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act), by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On December 10, 1975, notice was published in the **Federal Register** (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of Subpart DD to Part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Notice of public hearing published in a newspaper of general circulation in the State at least sixty (60) days prior to the date of such hearing.

2. Public hearing conducted by the Environmental Improvement Board.

3. Filing of adopted regulations, amendments, or revocations under the State Rules Act.

The New Mexico State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act.

By letter dated August 12, 1997, from Sam A. Rogers, Bureau Chief, to Emzell Blanton, Jr., Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to Federal standards as follow: Amendment to 1910, Subpart B, Adoption and Extension of Established Federal Standards (61 FR 56831–56855, dated 11/4/96), and Amendment to 1926.55, Appendix A, Gases, Vapors, Fumes, Dust, and Mist (61 FR 56856, dated 11/4/96).

These standards, contained in New Mexico Occupational Health and Safety Regulations 11 NMAC 5.1 and 11 NMAC 5.2, were promulgated on August 8, 1997, in accordance with applicable State law.

The subject standards became effective September 15, 1997, pursuant to New Mexico State Law, Sections 50–9–1 through 50–9–25.

2. *Decision.* OSHA has determined that the State standards at 11 NMAC 5.1, and 11 NMAC 5.2 are identical to the comparable Federal standards, and therefore approves the standards.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor-OSHA, 525 Griffin Street, Room 602, Dallas, Texas 75202; Office of the Secretary, Environment Department, 1190 St. Francis Drive, Room 2200-North, Santa Fe, New Mexico 87503; and the Office of State Programs, 200 Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposed changes, and making the Regional Administrator's approval effective upon publication for the following reason.

The standards were adopted in accordance with the procedural requirements of State law, which included public comment, and further public participation would be repetitious.

The decision is effective September 8, 1997.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Dallas, Texas, this eighth day of September 1997.

Emzell Blanton, Jr.,

Regional Administrator.

[FR Doc. 97–27653 Filed 10–17–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10412, et al.]

Proposed Exemptions; Metropolitan Life Insurance Company

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

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, 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.

ADDRESSES: All written comments and request 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, N.W., Washington, D.C. 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, N.W., Washington, D.C. 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 (where 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.

Metropolitan Life Insurance Company (MetLife) Located in New York, NY

[Application No. D–10412]

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, effective April 1, 1997, to (1) the purchase or retention by an employee benefit plan (the Plan) and (2) the sale or continuation by MetLife or an affiliate (collectively, MetLife) of a synthetic guaranteed investment contract (the MetLife Trust GIC) entered into between the Plan and MetLife under which MetLife guarantees (the Guarantee) certain amounts (the Guaranteed Value).

This proposed exemption is conditioned upon the following requirements:

(a) The decision to enter into a MetLife Trust GIC is made on behalf of a participating Plan in writing by a fiduciary of such Plan which is independent of MetLife.

(b) A Plan investing in a MetLife Trust GIC has assets that are in excess of $25 million.

(c) Prior to the execution of the MetLife Trust GIC, the Plan fiduciary receives a full and detailed written disclosure of all material features concerning the MetLife Trust GIC, including—

(1) A Letter of Agreement between MetLife and the Plan fiduciary which stipulates the relevant provisions of the GIC, the applicable fees and the rights and obligations of the parties;

(2) Investment Guidelines defining the manner in which an investment manager will manage a MetLife Trust GIC;

(3) A copy of the Investment Management Agreement between MetLife and the Plan fiduciary;

(4) Information explaining in a manner calculated to be understood by a Plan fiduciary that, if a MetLife affiliated manager underperforms or if adverse market conditions occur, the interest rate that is credited (the Credited Rate) to a MetLife Trust GIC account (the Account) may be as low as 0 percent;

(5) The pertinent features of a MetLife conventional GIC (the MetLife Conventional GIC) that a Plan fiduciary may obtain upon the discontinuance of a MetLife Trust GIC, including an explanation that, although a MetLife Conventional GIC will offer a guarantee of principal, it may have a credited rate as low as 0 percent for the duration of the contract; and

(6) If granted, copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

(d) Upon the selection by a Plan fiduciary of a MetLife Trust GIC, a participant in a Plan that provides for participant investment selection (the Section 404(c) Plan) is given—

(1) A summary of the pertinent features of the documents listed above in paragraph (c) which are deemed appropriate for distribution to such participant;

(2) A copy of the operative language of the proposed exemption if the Section 404(c) Plan has entered into a MetLife Trust GIC arrangement before the final exemption is issued; and

(3) A copy of the operative language of the final exemption (i) to the extent that there have been modifications to the operative language of proposed exemption, or (ii) the Section 404(c) Plan acquires a MetLife Trust GIC after the final exemption is granted.

(e) Subsequent to a Plan's investment in a MetLife Trust GIC, the Plan fiduciary and, if applicable, the Plan participant, upon such participant's request, receive the following ongoing disclosures regarding such investment:

(1) A monthly report consisting of a Guaranteed Value Statement, which specifies the affected Plan's MetLife Trust GIC balance for the prior month, contributions, withdrawals, transfers, interest earned, the current month's ending balance for the MetLife Trust GIC, the current interest rate and a summary of transactions;

(2) A quarterly report consisting of a Market Value Statement, which specifies the prior quarter's ending market value for a Plan's MetLife Trust GIC, contributions, withdrawals, the fees paid to MetLife, investment income, realized capital gains and/or losses from sales, changes in unrealized appreciation of assets, the current quarter's ending market value and rate of return, and a summary of transactions; and

(3) An annual portfolio listing or letter describing key events, depending upon its arrangements with a Plan fiduciary.

(f) As to each Plan, the combined total of all fees and charges imposed under a MetLife Trust GIC is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(g) Each MetLife Trust GIC specifically provides an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(h) Each MetLife Trust GIC has a predefined maturity date or dates selected by the Plan fiduciary and agreed to by MetLife.

(i) Prior to the affirmation of a maturity date, MetLife informs the Plan fiduciary of the new reset rate for the Credited Rate.

(j) MetLife maintains books and records of each MetLife Trust GIC transaction for a period of six years. Such books and records are subject to annual audit by independent, certified public accountants.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of April 1, 1996.

Summary of Facts and Representations

1. The parties to the transactions are described as follows:

(a) *MetLife* is a mutual life insurance company organized under New York law and subject to supervision and examination by the Insurance Commissioner of the State of New York. It is the second largest life insurance company in the United States. As of December 31, 1996, MetLife and its subsidiaries had $279 billion in assets under management. MetLife provides funding, asset management and other services for Plans covered by the Act. MetLife also maintains pooled and single separate accounts pursuant to New York Insurance Law. These accounts are used in connection with group annuity and group life insurance contracts issued to Plans as well as other entities. The assets in these accounts are insulated from MetLife's general account. The returns generated from such accounts are used to support contractual obligations. Accounts are created to invest in one or more asset classes and are managed by MetLife, an affiliate of MetLife or a nonaffiliated company.

As of June 11, 1996, MetLife's ratings were as follows:

Rating firm	Rating	Rationale
A.M. Best	A+ (Superior)	Financial position and operating performance.
Duff & Phelps	AA+	Claims-paying ability.
Moody's	Aa2 (Excellent)	Financial strength.
Standard & Poor's	AA (Excellent)	Claims-paying ability.

(b) *State Street Research & Management Company (State Street Research),* a wholly owned subsidiary of MetLife, is an investment management company registered as an investment adviser under the Advisers Act. State Street Research, which is Boston-based, was founded in 1927 and acquired by MetLife in 1983. As of December 31, 1996, State Street Research managed $41 billion in equity, fixed income and balanced accounts for retirement plans, foundations and endowments and mutual funds.

(c) *The Plans* involved herein will consist primarily of defined contribution plans that are subject to the provisions of Act as well as Plans that are subject to sections 401(a) and 403(b) of the Code.

2. MetLife has offered a variety of guaranteed investment contracts or ''GICs'' to Plans for many years. A GIC is a group annuity contract from an insurance company which provides contractholders with a fixed rate of return for a specified period, while paying benefits to Plan participants at guaranteed value. The GICs issued by MetLife, which are described herein, will have predefined maturity dates.

Plan fiduciaries frequently use GICs as funding vehicles for the ''fixed income'' or ''stable value'' investment options of defined contribution plans. According to Plan provisions, participants may have the right to transfer funds among a Plan's various investment options, or to take funds out of the Plan in withdrawals or loans. Such payments from a given option are called ''participant-initiated withdrawals'' or ''benefits.''

Recently, many Plan sponsors have begun to request the direct ownership of the assets that back the GIC since nominal ownership of the assets affords such sponsors full insulation in case of the insurance company's insolvency. For this reason, insurers have begun to develop ''synthetic GICs'' which offer all or nearly all of the same features as traditional GIC products except that the assets are placed in a segregated trust or custodial bank account owned by the Plan rather than being owned by the insurer.

3. Since April 1, 1997, MetLife has been offering an investment product (referred to herein as a ''MetLife Trust GIC'') to Plans having assets that are in excess of $25 million. MetLife believes that the transaction would violate section 406(a)(1) (A) and (B) of the Act because MetLife would be guaranteeing a certain asset value (i.e., the Guaranteed Value) to a Plan and thereby extending credit to such Plan as the result of a Plan's purchase of a MetLife Trust GIC. In addition, MetLife believes that the transaction would violate section 406 (b)(1) and (b)(2) of the Act because MetLife or an affiliate, in honoring a withdrawal initiated by either a Plan participant or a Plan sponsor (see Representations 15 and 16 of this proposed exemption), would be using their discretion in selecting securities that will be subject to the Guarantee and in reducing the Guaranteed Value to reflect the withdrawal.

Further, MetLife asserts that the proposed Guarantee could be perceived as giving rise to a conflict of interest between MetLife or an affiliate and the Plans in violation of section 406 (b)(1) and (b)(2) of the Act because the amount of the cumulative total return of each MetLife Trust GIC will be affected in part by MetLife or its affiliate's exercise of fiduciary authority or control, including the valuation of assets. In this regard, MetLife notes that both it and its affiliates have an interest in maximizing the cumulative total return of a MetLife Trust GIC, thereby reducing the amount of, or entirely eliminating, MetLife's obligation to make a payment on the Guarantee. Accordingly, MetLife requests exemptive relief from the Department.

4. Each MetLife Trust GIC will consist of a group annuity contract and an Investment Management Agreement between the Plan sponsor and MetLife, which will typically be the investment manager. A MetLife Trust GIC will be offered to a Plan having total assets that are in excess of $25 million. The principal amount of such Trust GIC will be negotiated between MetLife and the Plan fiduciary.

5. The decision to enter into a MetLife Trust GIC will be made on behalf of the Plan by a Plan fiduciary who is independent of MetLife and its affiliates. MetLife represents that due to the large size of the Plans involved, the independent fiduciaries authorizing Plans to enter into the MetLife Trust GICs can be expected to be (or retain) sophisticated, professional asset managers with specialized expertise in the area of GICs and similar investments. However, prior to the Plan's investment, MetLife will furnish the Plan's independent fiduciary with a full and detailed disclosure of all features concerning the MetLife Trust GIC. In addition to the MetLife Trust GIC document, such disclosures will include (a) a Letter of Agreement between MetLife and the Plan fiduciary which stipulates the relevant provisions of the GIC, the applicable fees and the rights and obligations of the parties; (b) Investment Guidelines defining the manner in which an investment manager will manage a MetLife Trust GIC; (c) a copy of the Investment

Management Agreement between MetLife and the Plan fiduciary; (d) an explanation that if a MetLife affiliated manager underperforms or if adverse market conditions occur, the Credited Rate applied to a MetLife Trust GIC Account may be as low as 0 percent; (e) the pertinent features of a MetLife Conventional GIC including an explanation that, although a MetLife Conventional GIC will offer a guarantee of principal, it may have a credited rate as low as 0 percent for the duration of the contract, assuming the Plan fiduciary decides to discontinue a MetLife Trust GIC by converting it into a MetLife Conventional GIC; and (f) if granted, copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

Upon the selection by a Plan fiduciary of a MetLife Trust GIC, a participant in a Section 404(c) Plan will be provided with a summary of the pertinent features of the documents listed above which are deemed appropriate for distribution to such participant. In addition, the participant will be given a copy of the operative language of the proposed exemption if the Section 404(c) Plan has entered into a MetLife Trust GIC arrangement before the final exemption is issued. Further, the participant will receive a copy of the operative language of the final exemption (a) to the extent there have been modifications to the operative language of the proposed exemption, or (b) the Section 404(c) Plan acquires a MetLife Trust GIC after the final exemption is granted. In the event the participant wishes to review the underlying documents, including the proposed and final exemptions, such information will be made available to the participant upon request.

6. Plan assets that are invested in a MetLife Trust GIC will be placed in a segregated custodian account or trust account. The Plan sponsor will select an independent custodian and/or trustee, with the approval of MetLife. MetLife will not be a party to the custodial agreement or the master trust document. Thus, each MetLife Trust GIC will have its own Account. At all times, the Plan, through the trustee, will own all of the assets in the Account.

7. As stated above, MetLife, acting in a fiduciary capacity, will generally be the Account's investment manager. However, by mutual agreement with the Plan sponsor, MetLife may designate State Street Research as sub-manager with respect to some or all of the assets in an Account. At its discretion and by agreement with the Plan sponsor, MetLife may also designate an unaffiliated investment manager as sub-manager to manage some or all of the Account assets, assuming MetLife obtains appropriate regulatory approvals. Under all circumstances, each investment manager or sub-manager servicing an Account will acknowledge in writing to the Plan fiduciary that it will be a fiduciary of the Plan with respect to a MetLife Trust GIC and as such, will be subject to the fiduciary provisions of the Act.

8. Before an Account is established, MetLife and the Plan sponsor will agree to a set of investment guidelines which will define how the investment manager will manage the Account's assets, identify the assets that are approved for investment by the Plan and allow performance to be measured against one or more published indices based upon recognized industry sources. It is anticipated that these guidelines will vary from one Plan to another. Once the investment guidelines are established, they can be changed only by mutual agreement between MetLife and the Plan sponsor. The investment guidelines will be subject to review by the New York Department of Insurance and possibly, by the insurance departments of other states.

Objective performance benchmarks for an Account will allow the Plan sponsor to evaluate the performance of the investment manager or sub-manager. The benchmarks selected for the Account will be appropriate to the assets and specific investment objectives of the Account. The benchmarks will be based on objectively-published indices such as the Lehman Brothers Intermediate Government/Corporate Index, the Merrill Lynch Intermediate Government/Corporate Index, or a combination of one or more indices, as appropriate to the composition of the Account.[1]

9. Contributions placed into an Account will be invested immediately by the investment manager or, if applicable, sub-manager, primarily in publicly-traded, fixed income securities. The specific classes of investments allowed in any particular Account will be set forth in the Account's investment guidelines. These investments may include U.S. Treasury securities, U.S. agency debt, corporate bonds, mortgage-backed securities, asset-backed securities, equities, foreign government and agency debt, supranational agency debt or other asset classes and employer debt securities within the meaning of section 407(d) of the Act.[2] The investment guidelines may also allow the use of options (other than naked put and call options), futures, warrants, forwards or similar instruments on a limited basis for hedging and risk management purposes.[3]

MetLife does not expect any single Account to utilize every one of these types of assets or asset quality specifications. Therefore, the aforementioned investments are intended to represent the universe of investment alternatives among which the Plan sponsor can choose to meet its investment and benefit needs.

As part of the investment guidelines, the appropriateness of the broad asset classes and asset quality levels will be subject to the review and approval of the New York State Insurance Department (and possibly the insurance departments of other states).

10. The value of the Account will be its fair market value (the Market Value). In the case of an asset consisting of a security for which market quotations are readily available, the quoted Market Value of such security, as determined by the investment manager or the sub-manager, will be the fair market value. Because MetLife expects the investments will be composed primarily of publicly-traded, fixed income securities, it expects that in virtually all cases, asset investment values can be determined readily from any of a number of widely-available, independent published sources.

In the case of any other asset, quotations will be obtained from broker-dealers or pricing services that are independent of MetLife, the investment manager and/or the sub-manager. The asset will be valued based on the average of at least three bid and three ask prices obtained from such independent sources. To the extent that

[1] It is represented that data from indices such as the Lehman Brothers Intermediate Government/Corporate Index is available on a daily basis from Bloomberg or by subscription from Lehman Brothers.

[2] The Department is not proposing, nor it the applicant requesting, exemptive relief herein with respect to the acquisition and holding of employer debt securities beyond that provided under sections 407 and 408 of the Act.

[3] In this regard, it is represented that the use of options and futures contracts will be governed by the investment guidelines that are negotiated between MetLife and Plan fiduciaries. Any guidelines permitting investment in derivatives must be approved by both the Plan fiduciaries and MetLife. The use of derivatives will be for hedging purposes only. Futures contracts will not be permitted to be used to leverage a MetLife Trust GIC and only unaffiliated brokers will be used to purchase such contracts.

MetLife represents that the yield-to-maturity calculated on equities and hedge securities will be calculated, depending on the nature of the Account, on a proxy that will provide an equivalent to the historical yield. MetLife also states that the Credited Rate reset formula will ensure that all market performance is passed through in future Credited Rates.

quotations cannot be obtained, the Market Value of the asset will be based upon an appraisal made by an independent appraiser selected by either the custodian or a Plan sponsor or fiduciary which is not affiliated with MetLife, the investment manager, and/or the sub-manager.[4]

11. Each MetLife Trust GIC will provide a Guaranteed Value that will be available exclusively for participant-initiated benefit withdrawals. The Guaranteed Value is defined as the amount of any contributions, plus interest at a credited rate (i.e., the Credited Rate), minus withdrawals. It is expected that the Guaranteed Value and the Market Value of the Account may differ at any given time. However, MetLife will seek to maintain the Guaranteed Value as reasonably close to the Market Value by reflecting any difference between them in the Credited Rate.[5]

12. MetLife will determine the initial Credited Rate by using an objective methodology that is fully disclosed and agreed to by Plan sponsors. The initial Credited Rate will reflect three factors: (a) The expected yield-to-maturity of assets in an Account; (b) payments expected into or out of an Account; and (c) the anticipated expenses to be charged under the MetLife Trust GIC.[6] The Credited Rate will not be affected by the length of time that MetLife has managed a MetLife Trust GIC Account.

The period for which the Credited Rate is in effect will be agreed to in advance by MetLife and the Plan sponsor and it will not exceed one year.[7] At the end of this period, on an agreed-upon date, MetLife will reset the Credited Rate by declaring a new interest rate (which can never be less than 0 percent) to be credited to the Guaranteed Value. The new Credited Rate will be based upon the criteria noted above and also reflect the amortization of any difference between the Guaranteed Value and Market Value. (The amortization period will be no longer than the period specified in the MetLife Trust GIC which is typically the approximate average duration of the assets in the Account.)

In resetting the Credited Rate, MetLife will utilize the following formula:

$$(MV+CF)*(1+YTM)^n=(GV+CF)*(1+i)^n$$

Where—

- MV = Market Value (includes fees and expenses)
- CF = Expected Cash Flow
- GV = Guaranteed Value (includes fees and expenses)
- YTM = Anticipated Yield-To-Maturity (net of fees and expenses)
- n = Duration
- i = Credited Rate.[8]

To solve the equation for the Credited Rate, (i), the formula can be mathematically restated as—

$$((MV+CF/GV+CF)*(1+YTM)^n)^{1/n}—1=i$$

The formula then shows that the Credited Rate, (i), equals the Anticipated Yield-To-Maturity of the assets in the Account (YTM), adjusted by the difference between the Market and Guaranteed Values (MV/GV) spread over the portfolio's Duration (1/n) of the Account's investment portfolio. In other words, the starting point for the Credited Rate will always be the current net Anticipated Yield-To-Maturity or the expected return on assets in the portfolio. The Credited Rate will then be adjusted to account for the differences between the prior expected returns and the portfolio's actual returns. To provide a smooth pattern of returns for Plan participants, MetLife will factor these differences in over time. For example, if a portfolio has a duration of three years, one-third of the difference will be recognized in the current reset.

The Credited Rate may also be reset by MetLife as a result of certain actions by a contractholder or in the event of a contract discontinuance. Specifically, the events that will trigger a reset of the Credited Rate before the end of the stated period are (a) notice of the discontinuance of a MetLife Trust GIC, (b) Plan contributions beyond those anticipated under the Plan's formula, (c) withdrawals that are not initiated by Plan participants, and (d) a Plan fiduciary's request for an earlier reset. Any reset of the Credited Rate will be

[4] MetLife anticipates that in many cases, the custodian bank will perform the asset valuation function in reliance on published sources. If the assets are not listed in published sources, the custodian may ask the investment manager to supply the price. To the extent that MetLife or an affiliated manager or sub-manager has the authority to establish the value of the assets of a MetLife Trust GIC, MetLife proposes a three-part method in order of preference: (a) From independent published sources, (b) the average of at least three bid and ask prices from independent sources; or (c) based on an appraisal by an independent appraiser which is not selected by or affiliated with MetLife, the investment manager and/or the sub-manager.

[5] For example, assume that the Guaranteed Value of a MetLife Trust GIC is $10,000,000 while its Market Value is $10,250,000. Assume also that the Anticipated Yield-To-Maturity of such investment is 7.25 percent based upon an objective, external index and the approximate duration of the MetLife Trust GIC is 5.23 years, again based upon an external, objective index. Assume further that no deposits or withdrawals are ever made to or from the MetLife Trust GIC.

The 2.5 percent difference between the Market Value and the Guaranteed Value will be amortized by MetLife over the 5.23 year Duration of the MetLife Trust GIC by increasing the Credited Rate. Therefore, the first year's addition to the Credited Rate will be approximately 48 basis points (2.5 percent/5.23 years).

Instead of crediting the 7.25 percent anticipated yield of the MetLife Trust GIC, MetLife represents that participants will be credited with an effective annual rate of 7.73 percent for the first year (7.25 percent + 0.48 percent).

In the foregoing example, if the Guaranteed Value of the MetLife Trust GIC is $10,000,000 and the Market Value is $9,750,000, MetLife states that there will be a reduction in the Credited Rate of approximately 48 basis points. Rather than crediting participants with the 7.25 percent yield, participants will be credited with an effective annual rate of 6.77 percent for the first year (7.25 percent—0.48 percent).

For subsequent years, the Credited Rate will be determined in the same manner.

[6] The applicant notes that factors (a) and (c), cited above, are components of the net Anticipated Yield-to-Maturity or YTM and that factor (b) comprises the Cash Flow or CF variable in the Credited Rate reset formula which is discussed later in this Representation.

[7] Typical Credited Rate reset dates may occur monthly, quarterly, semiannually or annually at the choice of the Plan sponsor. For example, during the period from 24 to 12 months prior to the final maturity date of a MetLife Trust GIC (see Representation 13), the Credited Rate may be reset as frequently as quarterly. During the period from 12 months prior to the final maturity date to the final maturity date, the Credited Rate may be reset as frequently as monthly.

[8] In this proposed exemption, MetLife has described such components of the Credited Rate reset formula as the Market Value and the Guaranteed Value. MetLife has further defined the terms "Expected Cash Flow," "Duration," and "Yield-to-Maturity," and represents that such variables, with the exception of Expected Cash Flow, are based upon objective, external criteria which would be communicated by MetLife to the Plan fiduciary. MetLife also explains that a Plan fiduciary would then be able to verify the accuracy of the index data directly from the index provider or from a third party news or information source.

MetLife represents that the Expected Cash Flow is the net amount of participant-initiated contributions and withdrawals expected to flow into or out of a MetLife Trust GIC Account during the period for which the Credited Rate will be effective (i.e., the Credited Rate Period). MetLife notes that the Expected Cash Flow is not related to any external index but reflects the cumulative effect of individual participants' asset allocation decisions. According to MetLife, the level of Expected Cash Flow is determined in consultation with the Plan and is based upon the Plan's historical cash flow pattern as well as expected Plan events.

MetLife explains that the Duration is the period from the effective date of the Credited Rate reset until the maturity date or average maturity date. MetLife notes that the Credited Rate reset formula for a MetLife Trust GIC will use the duration of the index unless specifically requested by the Plan with MetLife's consent. MetLife represents that it will not calculate the duration of the index. Rather, such calculation will be made by the index provider.

According to MetLife, the Yield-to-Maturity is the yield of a Treasury security with a comparable duration once a Plan has selected a defined maturity date. Prior to the selection of a maturity date, MetLife states that the Yield-to-Maturity component will be the Yield-to-Maturity of an external index unless specifically requested by the Plan with MetLife's consent. MetLife further represents that the yield-to-maturity of the index will be calculated by the index provider.

MetLife further points out that should a Plan choose another source for the aforementioned variables, the source may only be used with MetLife's consent. MetLife notes that the consent must be renewed by the Plan at least annually.

determined by the Credited Rate reset formula described above and will reflect any change in the parameters (such as Market Value and Guaranteed Value) since the prior reset. Such reset of the Credited Rate will be disclosed to the sponsor of a Plan. Depending upon the events causing the rate change, up to 30 days' advance written notice of such change will be given by MetLife to the Plan fiduciary. Assuming the Plan fiduciary does not agree to the reset under circumstances (b) and (d), such fiduciary will be afforded the opportunity to discontinue the MetLife Trust GIC.

13. Each MetLife Trust GIC will have a defined maturity date or dates selected by the Plan fiduciary and agreed to by MetLife. One month before the anniversary date of the MetLife Trust GIC, MetLife will notify the Plan fiduciary, in writing, of the impending anniversary of such MetLife Trust GIC, as well as the new reset rate for the Credited Rate, and afford the fiduciary the opportunity to notify MetLife that it will affirm the maturity date. If the Plan fiduciary does not inform MetLife, in writing, prior to the anniversary date of the intention to affirm the maturity date, the date will be extended by one year and the notification procedure will be repeated prior to the next impending anniversary date of the MetLife Trust GIC.[9] Upon the maturity of a MetLife Trust GIC, MetLife represents that if the Market Value of the assets invested in the MetLife Trust GIC is less than the amount initially placed in the Account plus guaranteed interest at the Credited Rate, it will make up the difference. Such amount will be adjusted for interim contributions and withdrawals. As an additional benefit, MetLife states that if at maturity the Market Value of a MetLife Trust GIC exceeds the Guaranteed Value, the Plan will retain the full Market Value appreciation of the underlying assets.

14. The Plan sponsor will pay MetLife a single contract charge that is based upon a specified percentage of the Guaranteed Value. The contract charge will include management fees, risk charges and administrative expense charges, all of which will not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act.[10] The contract charge, which will be negotiated by MetLife with each Plan fiduciary, will be influenced by the composition of the MetLife Trust GIC, the investment guidelines and the nature of the Plan. In general, the higher the dollar investment in a MetLife Trust GIC, the lower the contract charge.

The contract charge will be calculated monthly by multiplying the specified percentage of the MetLife Trust GIC's average Guaranteed Value for the month by an applicable fee schedule percentage.[11] MetLife will withdraw the contract charge from the Account each month. Afterwards, MetLife will compensate the affiliated and unaffiliated investment managers and sub-managers from the contract charge unless the Plan fiduciary elects to compensate the investment manager or sub-manager directly.

15. In the event of a participant-initiated benefit withdrawal, which will trigger the Guarantee mechanism in a MetLife Trust GIC, MetLife typically requests written notice of such a benefit withdrawal at least 48 hours in advance. Sometimes, such a benefit withdrawal request may be made by a Plan orally and then followed by a confirming fax. Under such circumstances, the investment manager or the sub-manager will make sufficient liquidity available to meet the withdrawal and the custodian/trustee will transfer this amount. Such liquidity for participant-initiated benefit withdrawals will be made by MetLife at the Guaranteed Value of the Account. No additional fees will be charged. If the investment manager or sub-manager has liquidated more assets than are needed to meet the benefit withdrawal, the excess will be immediately reinvested.

16. In addition to participant-initiated benefit withdrawals, the Plan sponsor can choose to withdraw funds from a MetLife Trust GIC at any time. In a non-benefit withdrawal, the Plan fiduciary will remove assets from the MetLife Trust GIC Account. A non-benefit withdrawal will be made at Market Value. Under these circumstances, MetLife will reduce the Guaranteed Value by a proportionate amount that bears the same ratio to the entire Guaranteed Value as the amount withdrawn has to the entire Market Value.

17. MetLife represents that it is precluded from selling depreciating assets and retaining appreciating assets held in a MetLife Trust GIC Account to honor non-benefit withdrawals because all assets are reported at their current market values. Under such circumstances, all gains and losses will flow through to the Plan and the Plan will retain ownership of the assets at all times. Therefore, MetLife states that the selection of assets to be liquidated to satisfy a withdrawal request will have no bearing on the type of withdrawal transaction.

18. MetLife will provide monthly and quarterly written reports to Plan fiduciaries following their preparation.[12] The monthly report will consist of a Guaranteed Value Statement showing the affected Plan's MetLife Trust GIC balance for the prior month, contributions, withdrawals, transfers, interest earned, the current month's ending balance for the MetLife Trust GIC, the current credited interest rate and a summary of transactions. MetLife represents that the monthly report will not reflect the Market Value because the assets that comprise the Market Value are owned by the Plan and are held in the Plan's MetLife Trust GIC Account. Because these are Plan assets, MetLife explains that the Plan fiduciary can check the Market Value of the Account whenever he or she may so choose. MetLife further notes that it expects the trustee or custodian of the Account will generate this type of information to the Plan fiduciary.

The quarterly report will consist of a Market Value Statement which will reflect the prior quarter's ending market value for a Plan's MetLife Trust GIC (based upon data provided to MetLife by the trustee or the custodian), contributions, withdrawals, the fees paid to MetLife from which MetLife will make payments to an investment manager or sub-manager, if applicable, investment income, realized capital gains and/or losses from sales, changes in unrealized appreciation of assets, the current quarter's ending market value and rate of return, and a summary of

[9] MetLife notes that the procedures governing the maturity date of a MetLife Trust GIC will not affect the ability of a Plan fiduciary to discontinue such investment as described in Representation 19.

[10] The Department expresses no opinion herein on whether such compensation will satisfy the terms and conditions of section 408(b)(2) of the Act.

[11] MetLife has constructed the following fee schedule to illustrate its contract charges under a hypothetical arrangement:

- First $100 million—50 basis points;
- Next $100 million—45 basis points;
- Excess over $200 million—35 basis points.

MetLife notes that due to the bundled nature of the fees and the fee variations among the investment managers and sub-managers, it would be impossible to forecast precisely how MetLife would allocate the investment management component of such fees among the managers. However, MetLife explains that a recent survey of institutional investment managers indicated that fees for managing this type of assets could range from 12 to 44 basis points. Therefore, MetLife expects that at least initially, the investment management component of the contract charge that is paid by MetLife to State Street Research or any other affiliated or unaffiliated investment manager or sub-manager for managing a MetLife Trust GIC should be close or within this range. MetLife further explains that in no event will such fees exceed reasonable compensation.

[12] The reports described above may also be provided by Plans to Plan participants upon such participants' request.

transactions.[13] In addition to the Market Value Statement, MetLife will provide a Guaranteed Value Statement to the Plan fiduciary on a quarterly basis.

Although there is no specific requirement that MetLife issue an annual report, the Plan fiduciary will be provided with either an annual portfolio listing or a letter describing key events. Any further information provided to the Plan fiduciary will depend upon particular arrangements with such fiduciary.

In addition to the aforementioned reports, MetLife will maintain books and records of each MetLife Trust GIC transaction for a period of six years. Such books and records will be subject to annual audit by independent, certified public accountants.

19. A Plan sponsor may discontinue a MetLife Trust GIC at any time and for any reason. However, MetLife may discontinue the MetLife Trust GIC for cause only (e.g., a Plan's disqualification), a material breach of the MetLife Trust GIC (e.g., a Plan sponsor's encouraging participants to withdraw or transfer funds invested in a MetLife Trust GIC) or a material alteration of a Plan's practices and procedures as specified in the MetLife Trust GIC. Assets that are held in a MetLife Trust GIC will be valued in accordance with the valuation methodology described above in Representation 10. If the discontinuance occurs prior to the maturity date, the assets of the MetLife Trust GIC will be liquidated at the Market Value. However, if the discontinuance occurs at the maturity date of the MetLife Trust GIC, the underlying assets will be liquidated at the greater of the Guaranteed Value or the Market Value.

Neither MetLife nor any investment manager or sub-manager will have the right to purchase or otherwise acquire these assets. In addition, no surrender or withdrawal fees will be paid to MetLife or to any investment manager or sub-manager upon the discontinuance of a MetLife Trust GIC.

20. If a MetLife Trust GIC is discontinued prior to maturity, three options will generally be available. The assets of a MetLife Trust GIC Account may (a) revert to the Plan sponsor, (b) be converted into a MetLife ''benefit responsive, nonparticipating, general account conventional GIC (i.e., the MetLife Conventional GIC) or (c) be fully liquidated and distributed to the Plan in cash.[14]

(a) *Reversion Option.* With respect to this option, management of the Account may revert to the Plan sponsor. Under such circumstances, the Plan sponsor will receive the MetLife Trust GIC portfolio intact with whatever appreciation or depreciation has occurred. In the event of a loss, MetLife will not be required to make restitution to the Plan sponsor because the sponsor will receive the actual results of investment performance. In the event of a gain, MetLife will not be permitted to retain the gain and the Plan will benefit from the full amount of the gain.

(b) *The MetLife Conventional GIC Option.* If a MetLife Trust GIC is discontinued at a time when there are losses and other than for cause, the Plan sponsor may select the second option by liquidating the Account in order to purchase a MetLife Conventional GIC. The MetLife Conventional GIC will be identical to a traditional GIC which could be purchased by a Plan fiduciary with ''new money'' except that the maturity structure and credited rate will reflect the experience of the MetLife Trust GIC. The maturity date (or average maturity date, as appropriate) of the MetLife Conventional GIC may not exceed the duration of the index that has been used to set the MetLife Trust GIC's Credited Rate, unless agreed to by the Plan fiduciary. The credited rate of the MetLife Conventional GIC will reflect the rate MetLife is then offering for GICs with similar average maturity dates, adjusted so that any market value loss or gain present in the MetLife Trust GIC will be amortized over the period ending with the final maturity date of the MetLife Conventional GIC. The credited rate for the MetLife Conventional GIC will also be fixed for the entire contractual period and it cannot be lower than 0 percent.

MetLife represents that under this option, Plan participants will continue to have full access to their accounts on the basis of the guaranteed amount of the MetLife Conventional GIC which they may withdraw or transfer, as permitted under the terms of the Plan, at any time (including the day following the conversion), and without interruption. In practice, this means that even if the Market Value of a MetLife Trust GIC Account is less than its Guaranteed Value, the Plan fiduciary will have the option to discontinue the MetLife Trust GIC without recognizing a loss in value to participant accounts.[15]

Assuming this investment option is selected, MetLife will disclose in advance to a Plan fiduciary, and if applicable, to a Plan participant, pertinent features regarding the MetLife Conventional GIC including a representation to the effect that although a MetLife Conventional GIC may guarantee principal, it may have a credited rate of 0 percent.[16]

(c) *Cash Distribution Option.* Under this option, the Plan sponsor may agree to a cash distribution whereby the Plan will receive the full Market Value of the Account including any appreciation or losses that have occurred.

21. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The decision to enter into a MetLife Trust GIC has been made and will be made on behalf of a participating Plan in writing by a fiduciary of such Plan who is independent of MetLife.

(b) Each Plan investing in a MetLife Trust GIC has and will have assets that are in excess of $25 million.

(c) Prior to and subsequent to the execution of the MetLife Trust GIC, the Plan fiduciary, and if applicable, Plan participants, have received and will receive written disclosures of all material features concerning the MetLife Trust GIC, including a description of all applicable fees and charges, as well as ongoing disclosures with respect to such investment.

(d) As to each Plan, the combined total of all fees and charges imposed under a MetLife Trust GIC has not and will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(e) Each MetLife Trust GIC has provided and will specifically provide an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(f) MetLife has maintained and will maintain for a period of six years from the date of each MetLife Trust GIC

[13] It is represented that the Guaranteed Value Statement does not include a separate entry for fees because fees are reflected in the Credited Rate and are not deducted separately from the Guaranteed Value. It is also represented that a custodian or trustee of a MetLife Trust GIC may provide periodic statements to a Plan fiduciary.

[14] MetLife represents that it will not be precluded from presenting a Plan sponsor with other options that are deemed to be better-suited to the needs of the Plan.

[15] Assuming a Plan sponsor directs participants to withdraw their account balances from a MetLife Conventional GIC, MetLife reserves the right not to honor withdrawals based upon the guaranteed value of the GIC.

[16] The Department notes that the decision by a Plan fiduciary to convert a MetLife Trust GIC into a MetLife Conventional GIC, which guarantees principal but provides a below market rate of return (e.g., 0 percent), is subject to the provisions of section 404 of the Act. Accordingly, the Department emphasizes that it expects the Plan fiduciary to evaluate fully the terms of this investment option before electing a MetLife Conventional GIC.

transaction, books and records of such transactions that will be audited annually by independent, certified public accountants.

Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons within 60 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will be mailed by MetLife to Plan fiduciaries that have already entered into MetLife Trust GIC arrangements. The notice will include (a) a copy of the proposed exemption, as published in the **Federal Register**, which will be given to the Plan fiduciaries, (b) the text of the operative portion of the proposed exemption, which will be distributed by Plan fiduciaries to Plan participants in Section 404(c) Plans, and (c) a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Comments and hearing requests regarding the proposed exemption will be due 90 days from the publication of the notice of proposed exemption in the **Federal Register**.

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

Valley Forge Consulting Corporation, Profit Sharing Trust (the Plan), Located in King of Prussia, PA

[Application No. D–10466]

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 of a first mortgage note (the Note) by the individually-directed account (the Account) in the Plan of Steven R. Eyer to Mr. Eyer, provided—

(a) The terms of the transaction are at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party.

(b) The Account is not required to pay any fees, commissions or other expenses in connection with the sale.

(c) The sale of the Note represents a one-time transaction for cash.

(d) The fair market value of the Note is determined by a qualified, independent appraiser.

(e) As consideration for the Note, the Account receives an amount that is no less than the fair market value of the Note as of the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by Valley Forge Consulting Corporation, a pension design and administration firm maintaining its principal place of business in King of Prussia, Pennsylvania. The Plan provides for participant-directed investments. As of May 16, 1997, the Plan had 19 participants, one of whom included Mr. Eyer who serves as a Plan trustee. The other trustees of the Plan are Jack C. Holland, W. Gerald Murphy and Leonard A. Mayo. As of February 28, 1996, the Plan had net income of $743,918. Also on that date, Mr. Eyer had $514,027 in his individual Account in the Plan.

2. Mr. Eyer requests an administrative exemption from the Department in order to purchase a defaulted mortgage note (the Note) from his Account in the Plan. The Note, dated August 3, 1990, is a first mortgage note that was executed between the Account, as lender, and Willie Torres, an unrelated party, as the borrower. The Note is secured by a parcel of improved real property located at 629–631–633 W. Girard Avenue and 1213 N. Seventh Street, Philadelphia, Pennsylvania (the Property). The Note was in the original principal amount of $22,000 and carried interest at the rate of 14½ percent per annum. The Note required 60 monthly payments of principal and interest in the amount of $269. It was amortized on the basis of a 30 year amortization schedule and matured on August 2, 1995. The Note required a balloon payment at maturity.

3. From August 1990 until July 1995, Mr. Eyer's Account received 59 monthly payments under the Note totalling $15,895 and it paid $211 in connection with the Note's administration. Because Mr. Torres made no further payments after July 1995, the Note was considered to be in default. At the time of the default, the Note had an outstanding principal balance of $21,695. Moreover, at the time of the default, there was a second mortgage on the Property in the principal amount of $38,150 which had been provided by Milton and Sandra Klein, the original owners of the Property as well as unrelated parties, to Mr. Torres. The second mortgage note had been executed contemporaneously with the Note.

4. Currently, the Property consists of an abandoned shell having multiple apartments. There is no glass in the windows and water damage has been extensive. In addition, Mr. Torres has filed for bankruptcy and is unable to make payments under the Note. Although foreclosure on the Property has been considered as a way of recouping the Account's investment in the Note, Mr. Eyer does not believe the potential value of the Property will cover over $15,000 in back taxes, $2,000 in back utilities and the second mortgage. Therefore, Mr. Eyer proposes to purchase the Note from his Account in order that the sale proceeds may be invested by his Account in performing assets.

5. The Note has been appraised by Vincent DiPentino, a licensed real estate salesman and broker. Mr. DiPentino is affiliated with the real estate firm of Century 21-DiPentino Associates, which is located in Philadelphia, Pennsylvania.

Mr. DiPentino represents that he has been in the real estate business in the Philadelphia area since 1978 and states that he has bought and sold properties both as principal and agent in the vicinity of the Property. Mr. DiPentino also states that he is independent of the parties involved in the proposed sale.

In an appraisal report dated June 23, 1997, Mr. DiPentino has determined the fair market value of the Note by first examining the fair market value of the underlying Property. In this regard, he notes that the Property is located in a distressed section of Philadelphia and has incurred substantial deterioration. Based on sales of comparable rental properties, he concludes that the fair market value of the Property is approximately $35,000 as of June 23, 1997. However, from this base value, Mr. DiPentino notes that the following costs must be deducted: (a) $3,000 in selling costs, (b) $16,000 in outstanding taxes, and (c) $2,000 in outstanding water and sewer bills. In addition, because the Note is in default, Mr. DiPentino states that it will be necessary to foreclose on the Property, an action that will result in additional costs of approximately $3,000. Thus, considering the foregoing factors as well as conversations with other parties potentially interested in purchasing the Note, Mr. DiPentino has placed the maximum fair market value of the Note at $10,000 as of June 23, 1997.

6. Mr. Eyer proposes to purchase the Note from his Account for $10,000, which represents the fair market value of the Note as determined by Mr.

DiPentino.[17] Mr. Eyer will not pay his Account accrued interest with respect to the Note inasmuch as all such interest had been paid through the date of default. The Account will not incur any sales commissions, fees or other expenses in connection with the proposed sale. All transactional costs will be borne entirely by Mr. Eyer.

7. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms of the transaction will be at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party.

(b) The Account will not be required to pay any fees, commissions or other expenses in connection with the sale.

(c) The sale of the Note will represent a one-time transaction for cash.

(d) The fair market value of the Note has been determined by a qualified, independent appraiser.

(e) As consideration for the Note, the Account will receive an amount that is no less than the fair market value of the Note as of the date of the sale.

Notice to Interested Persons

Because Mr. Eyer is the only participant in the Plan whose Account in the Plan will be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. However, comments and requests for a hearing must be received by the Department within 30 days of the publication of this notice of proposed exemption in the **Federal Register**.

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

Robert A. Doneff Custodial IRA (the IRA) Located in Manitowoc, WI

[Application No. D–10480]

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, 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 cash sale (the Sale) of a certain parcel of real property (the Property) by the IRA[18] to Robert A. Doneff (Mr. Doneff), a disqualified person with respect to the IRA, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(c) the IRA receives the fair market value of the Property, as established at the time of the Sale by a qualified, independent appraiser; and

(d) the IRA is not required to pay any commissions, costs, or other expenses in connection with the Sale.

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described under section 408(a) of the Code. The IRA was established by Mr. Doneff, the sole participant and beneficiary. As of June 1997, the IRA held assets valued at approximately $179,500. The trustee of the IRA is the First National Bank of Manitowoc.

2. The Property consists of a single parcel located north of Manitowoc, Wisconsin. It consists of approximately 71.5 acres of level to gently rolling land zoned for agricultural use and surrounded by other properties utilized for agricultural purposes. Although the zoning also permits building of single family residences with a minimum of five (5) acre lots and 330 feet of road frontage, the Property is presently used to grow crops. Mr. Doneff represents that he does not own any land adjacent to the Property and that the Property has not been leased or used by any disqualified persons.

3. According to the applicant, the IRA originally acquired the Property as a real estate investment. The IRA purchased the Property in 1993 from an unrelated third party in a cash transaction for $74,000. Since acquiring the Property, the IRA has rented it for agricultural usage at a rate of $45 per acre per year and has generated a net income of $6,095.43.

4. Lyle J. Hartman (Mr. Hartman), an accredited appraiser with Lyle Hartman, Appraisals, located in Manitowoc, WI, originally appraised the Property on March 22, 1997, and updated his appraisal on September 9, 1997. After inspecting the Property, Mr. Hartman determined that a fee simple interest in the Property is worth $171,600.

In his appraisal, Mr. Hartman relied primarily on the market approach. This method of appraisal involves an analysis of similar recently sold properties in the area in question, so as to derive the most probable sales price of the Property. Mr. Hartman determined the present highest and best use for the Property to be agricultural. However, due to the proximity of the Property to the City of Manitowoc, Mr. Hartman also considered the potential of the Property as a rural building site or, in case of its annexation by the City of Manitowoc, a residential building site.

Mr. Hartman states that he is a full time qualified, independent appraiser, as demonstrated by his status as a Senior Member of the National Association of Real Estate Appraisers. He has over 20 years experience and is familiar with the market changes and current market conditions pertaining to real estate in Manitowoc County, Wisconsin. In addition, Mr. Hartman represents that both he and his firm are independent of Mr. Doneff and that he possesses no present or future interest in the Property.

5. The applicant requests an exemption for the proposed sale of the Property by the IRA to Mr. Doneff. As noted above, the IRA would receive cash for the Property in an amount equal to the fair market value of such Property, as determined by a qualified, independent appraiser at the time of the Sale.

The applicant represents that the proposed transaction would be administratively feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the IRA because it would allow the IRA to dispose of the Property, thus enabling the IRA to diversify the investments and facilitate distributions from the IRA when appropriate. Finally, the applicant asserts that the transaction will be protective of the rights of the participant and beneficiary as indicated by the fact that the IRA will receive the fair market value of the Property, as determined by a qualified, independent appraiser on the date of sale and will incur no commissions, costs, or other expenses as a result of the Sale.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the Sale would be at least as favorable to the IRA as those obtainable in an arm's length

[17] It should be noted that the $11,695 ''loss'' or differential between the outstanding principal balance of the Note ($21,695) and its independently appraised value ($10,000) will only affect Mr. Eyer's Account in the Plan rather than the accounts of the other Plan participants.

[18] Because Mr. Doneff is the only participant in the IRA, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

transaction with an unrelated third party; (b) the Sale would be a one-time cash transaction allowing the IRA to diversify its investments and facilitate the making of distributions from the IRA when appropriate; (c) the IRA would receive the fair market value of the Property, established by a qualified, independent appraiser as of the date of sale; (d) the IRA would not be required to pay any commissions, costs, or other expenses in connection with the Sale; and (e) Mr. Doneff has determined that the proposed Sale of the Property would be feasible, in the best interests of the IRA, and protective of the participant and beneficiary.

Notice to Interested Persons

Because Mr. Doneff is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

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 401(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 rights of 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 are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of October, 1997.

Ivan Strasfeld,

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

[FR Doc. 97–27701 Filed 10–17–97; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–153)]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Airframe Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

Federal Register *Citation of Previous Announcement:* 62 FR 50965, notice number 97–141, September 29, 1997.

Previously Announced Dates and Addresses of Meeting: October 21, 1997, 8:00 p.m. to 4:30 p.m., October 22, 1997, 8:00 a.m. to 4:30 p.m., and October 23, 1997, 8:00 a.m. to 12:30 p.m. National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681–0001.

October 21, 1997: Building 1219, Room 225

October 22, 1997: Building 1229, Room 124 (Structures and Materials); Building 1212, Room 200 (Aerodynamics and Aerothermodynamics); Building 1268A, Room 1141 (Airborne Systems)

October 23, 1997: Building 1219, Room 225

Changes in the Meeting: Dates changed to December 9, 1997, December 10, 1997, and December 11, 1997. Location changed to Building 1202A.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Hernandez, National Aeronautics and Space Administration, Mail Stop 113, Langley Research Center, Hampton, VA 23681–0001, 757/864–6033.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: October 10, 1997.

Alan M. Ladwig,

Associate Administrator for Policy and Plans.

[FR Doc. 97–27650 Filed 10–17–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–155)]

NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

DATES: November 5, 1997, 8:30 a.m. to 5:00 p.m.; November 6, 1997, 8:30 a.m. to noon and 2:00 p.m. to 3:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–7, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:

Mr. Gregory M. Reck, Code AF, National Aeronautics and Space Administration, Washington, DC (202/358–4700).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- NASA Enterprise Presentations
- Review Status of Office of Chief Technologist

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.