Signed at Washington, DC this 1st day of December, 2006.

**Bradford P. Campbell,**

*Acting Assistant Secretary, Employee Benefits Security Administration.*

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**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Application No. L–11348]**

### Prohibited Transaction Exemption 2006–19; Grant of Individual Exemption Involving Kaiser Aluminum Corporation and Its Subsidiaries (Together, Kaiser) Located in Foothill Ranch, CA

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Grant of individual exemption.

This document contains a final exemption before the Department of Labor (the Department) that provides relief from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act).[1] The exemption permits, effective July 6, 2006, (1) the acquisition by the VEBA for Retirees of Kaiser Aluminum (the Hourly VEBA) and by the Kaiser Aluminum Salaried Retirees VEBA (the Salaried VEBA; together, the VEBAs) of certain publicly traded common stock issued by Kaiser (the Stock or the Shares), through an in-kind contribution to the VEBAs by Kaiser of such Stock, for the purpose of prefunding VEBA welfare benefits; (2) the holding by the VEBAs of such Stock acquired pursuant to the contribution; and (3) the management of the Shares, including their voting and disposition, by an independent fiduciary (the Independent Fiduciary) designated to represent the interests of each VEBA with respect to the transactions. The exemption affects the VEBAs and their participants and beneficiaries.

**DATES:** *Effective Date*: This exemption is effective as of July 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Blessed Chuksorji, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8567. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On October 26, 2006, the Department published a notice of proposed exemption in the **Federal Register** at 71 FR 62615. The document contained a notice of proposed individual exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a) of the Act. The proposed exemption had been requested in an application filed by Kaiser pursuant to section 408(a) of the Act, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 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. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before November 21, 2006. All comments were to be made part of the record.

During the comment period, the Department received 18 comments by telephone from participants in the Hourly and Salaried VEBAs regarding benefits questions or requests for a simplified explanation of the transactions. For those inquiries pertaining to benefits, the Department referred the participants to sources recommended by either Independent Fiduciary Services, Inc. (IFS), the Independent Fiduciary for the Hourly VEBA or Fiduciary Counselors, Inc. (FCI), the Independent Fiduciary for the Salaried VEBA. Of the participant comments, one participant in the Hourly VEBA submitted a written comment to the Department regarding a substantive matter. For a response, the comment was forwarded to IFS. The Department did not receive any requests from any VEBA participants for a public hearing.

In addition to the VEBA participant comments, the Department received written comments from IFS and FCI. Both comments are intended to clarify the Summary of Facts and Representations (the Summary) and the conditions and definitions of the proposal.

The written comments and the responses are discussed below.

**Hourly VEBA Participant's Comment**

A retired Kaiser employee and a participant in the Hourly VEBA questioned the decision to use the Kaiser Stock to fund the Hourly VEBA. The commenter suggested that each current retiree be given shares of Kaiser Stock to manage as such retiree wished.

In response to the comment, IFS explains that Kaiser and various unions (the Unions) engaged in negotiations, and that the Unions, representing the interests of all Kaiser retirees (both current and future), agreed to use the Stock to fund the plans that would provide retiree health benefits for both current and future retirees of the VEBAs. IFS further explains that this decision was memorialized in the collective bargaining agreements that were ratified by Kaiser employees working under the agreements. In addition, IFS notes that the agreements were subsequently approved by the Bankruptcy Court.

**Summary Clarifications**

In its comment letter, IFS has suggested the following clarifications to the Summary:

1. *Footnote 8*. IFS explains that Footnote 8 of the Summary ends with the phrase ''* * * the pre-emergence sales are treated as if they occurred on or after the Effective Date.'' IFS states that Section 2.3 of the Stock Transfer Restriction Agreement provides that these pre-emergence sales are treated as if they occurred on the day immediately succeeding the Effective Date. Therefore, IFS recommends that Footnote 8 of the Summary be revised to read ''* * * the pre-emergence sales are treated as if they occurred on the day immediately succeeding the Effective Date.''

2. *Representation 6(a)(1)*. IFS indicates that Representation 6(a)(1) of the Summary states that ''On July 7, 2006, Kaiser issued 8,809,000 shares of its common stock to the Hourly Trust.'' Similarly, in Representation 10(c), under the caption ''Pricing of the Hourly VEBA Shares,'' it states that ''The Hourly VEBA received its 8,809,000 Shares as of July 7, 2006.'' IFS explains that Representation 10(c) further states that market-driven sales of pre-emergence Shares provided a benchmark value ''of the Shares to which the Hourly VEBA was eventually entitled on July 7, 2006.'' IFS wishes to clarify that the correct number of Shares issued to the Hourly VEBA was 8,809,900.

In addition, IFS wishes to clarify that Kaiser issued the Shares—and the Hourly VEBA became the legal owner of

[1] Because the VEBAs are not qualified under section 401 of the Internal Revenue Code of 1986, as amended (the Code) there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code. However, there is jurisdiction under Title I of the Act.

the Shares—on July 6, 2006. However, IFS points out that the Hourly Trustee (National City Bank) did not obtain physical possession of the Share certificates on July 6, 2006 and that such physical possession did not affect legal ownership of the issued Shares. Therefore, IFS recommends that Representation 10(c) be changed to mirror Representation 6(a)(1). Thus, Representation 10(c) would read: ''Kaiser issued 8,809,900 Shares to the Hourly VEBA on July 6, 2006. Empire placed the fair market value of such Stock at $36.50 per Share as of that date.'' IFS also believes that Footnote 12 should immediately follow these sentences. Similarly, IFS states that the last sentence in the first paragraph of Representation 10(c) should reflect the July 6, 2006 date and the fact that the Shares were issued on that date. Accordingly, that sentence should read ''In the interim, the market-driven sales of pre-emergence Shares described above provided a benchmark for assessing the value of the Shares issued to the Hourly VEBA on July 6, 2006.''

3. *Representation 10(a).* IFS indicates that the first paragraph of Representation 10(a) refers to IFS as a ''wholly owned Delaware corporation.'' To remove any ambiguity, IFS suggests referring to it as ''Independent Fiduciary Services, Inc.'' In addition, IFS recommends that the first sentence of Representation 10(a) be revised to read, in part, as follows: ''* * * the Hourly Independent Fiduciary Agreement with Independent Fiduciary Services, Inc. (IFS) of Washington, D.C., to serve * * *.'' IFS also suggests that the second sentence of Representation 10(a) to read: ''IFS is a closely held Delaware corporation with no subsidiaries or affiliates.''

Further, IFS explains that in the second paragraph of Representation 10(a), a new subparagraph should be added to its ''Duties and Responsibilities'' which states: ''and (i), the authority to consider and engage in pre-emergence sales.'' IFS explains that this additional authority was given to it by the Board of Trustees of the Hourly VEBA in a letter dated April 5, 2006.

4. *Representation 10(c).* IFS explains that the fourth paragraph of the second section mislabeled Representation 10(c) (with the caption ''Views on the Stock Transfer Restriction Agreement and the Registration Rights Agreement'') states that ''all expenses associated with effecting a demand or shelf registration, including piggy-back rights, will be borne by Kaiser.'' The next paragraph describes the expenses related to a shelf registration and explains that ''the Hourly VEBA will be responsible for paying underwriting commissions and other selling fees.'' To remove any possible confusion, IFS notes that section 6.4(b) of the Registration Rights Agreement provides that, under any of the registration rights, any independent counsel or experts retained by the Hourly VEBA will be paid by the Hourly VEBA, and ''all underwriting fees, discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities will be borne by the applicable Holder.'' Thus, IFS believes that this sentence should read as follows: ''IFS further represents that all expenses associated with effecting a demand or shelf registration, including piggy-back rights, will be borne by Kaiser, except for underwriting commissions and other selling fees.''

5. *Representation 13(e).* According to IFS, Representation 13(e) indicates that the VEBAs have not incurred, or will not incur, any fees, costs, or other charges, other than those described in certain agreements, ''as a result of any of the transactions described herein.'' Under the Registration Rights Agreement, IFS explains that a selling party will be responsible for ''all underwriting fees, discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities.'' Thus, IFS believes that the Registration Rights Agreement should be added to the agreements listed. Therefore, that portion of the sentence should read: ''* * * (other than those described in the Hourly and Salaried Trusts, the Independent Fiduciary Agreements, the Hourly Settlements, the Salaried Settlement Agreement, and the Registration Rights Agreement) * * *.''

In response to these comments, the Department has noted the foregoing clarifications to the Summary.

**Clarifications to the Conditions and Definitions of the Proposal**

In addition to the Summary clarifications, IFS and/or FCI have requested the following changes to the conditions and definitions of the proposed exemption:

1. *Section II(a).* Section II(a) of the proposed exemption states that each independent fiduciary ''will have sole responsibility relating to the acquisition, holding, disposition, ongoing management, and voting of the Stock.'' IFS believes the following sentence more accurately reflects the fiduciary duties delegated to it under the Hourly Independent Fiduciary Agreement: ''* * * will have sole discretionary responsibility relating to the acquisition, holding, disposition, ongoing management, and voting of the Stock.''

The Department acknowledges IFS's comment and has revised Section II(a) of the final exemption, accordingly.

2. *Section II(f).* Section II(f) of the proposed exemption states that the VEBAs have not incurred, or will not incur, any fees, costs, or other charges ''as a result of any of the transactions described herein,'' except for those charges identified in certain agreements. IFS explains that the Registration Rights Agreement is not listed as one of the agreements. However, under the Registration Rights Agreement, IFS indicates that a selling party will be responsible for ''all underwriting fees, discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities.'' Therefore, IFS suggests that Section II(f) be revised to read as follows:

> The VEBAs have incurred no fees, costs or other charges (other than those described in the Hourly and Salaried Trusts, the Independent Fiduciary Agreements, the Hourly Settlement Agreement, the Salaried Settlement Agreement, and the Registration Rights Agreement) as a result of any of the transactions described herein.

In response to this comment, the Department has revised Section II(f) of the final exemption.

3. *Section III(h).* In the Definitions, Section III(h) of the proposed exemption states that the Independent Fiduciary ''will not be deemed to be independent of and unrelated to Kaiser if: (1) such fiduciary directly or indirectly controls, is controlled by or is under common control with Kaiser; (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this proposed exemption* * *'' Due to the ambiguity inherent in the word ''indirect'' in the context of the Hourly VEBA's ownership of 44 percent of Kaiser, IFS believes clarifying subparagraphs (1) and (2) with the qualifier ''other than described herein,'' is necessary to resolve any uncertainties. Therefore, IFS suggests that Section III(h) be revised to read as follows:

> ''Independent Fiduciary'' means the Independent Fiduciary for the Hourly VEBA (or the Hourly Independent Fiduciary) and the Independent Fiduciary for the Salaried VEBA (or the Salaried Independent Fiduciary). Such Independent Fiduciary is (1) independent of and unrelated to Kaiser or its affiliates; and (2) appointed to act on behalf of the VEBAs with respect to the acquisition, holding, management, and disposition of the Shares. In this regard, the fiduciary will not be deemed to be independent of and unrelated to Kaiser if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Kaiser, other than described herein; (2)

such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, other than described herein; * * *

In addition, IFS and FCI note that Section III(h) provides, in subparagraph (3) that ''the annual gross revenue received by an Independent Fiduciary during any year of its engagement with Kaiser, may not exceed 1% of the Independent Fiduciary's annual gross revenue from all sources in order for the fiduciary to be deemed ''independent.'' As a matter of policy, IFS and FCI believe the 1% cap is a restriction that disadvantages relatively smaller independent fiduciaries, and which, in turn, deprives employee benefit plans of the opportunity to contract with otherwise qualified independent fiduciaries. Alternatively, both IFS and FCI recommend that the Department eliminate the 1% restriction and raise it to 5%, as has been done in past exemptions granted by the Department.

In response to these comments, the Department has adopted the recommendation suggested by IFS and FCI. In this regard, the Department has modified subparagraph III(h)(3) by raising the gross revenue cap to 5% in the final exemption.

4. *Sections III(k) and III(r).* Section III(k) of the Definitions lists certain parties who were signatories to the Registration Rights Agreement. IFS points out that although the Pension Benefit Guaranty Corporation (the PBGC) was not a signatory to this agreement, buyers of 200,000 or more pre-emergence Shares were signatories. Accordingly, IFS suggests that Section III(k) be revised to read as follows:

The term ''Registration Rights Agreement'' refers to the Registration Rights Agreement between Kaiser and National City Bank, acknowledged by the Hourly Independent Fiduciary with respect to management of the Stock held by the Hourly Trust.

Similarly, IFS explains that the PBGC was not a signatory to the Stock Transfer Restriction Agreement, and it requests that the Department revise Section III(r) to read as follows:

The term ''Stock Transfer Restriction Agreement'' means the agreement between Kaiser and National City Bank, acknowledged by the Hourly Independent Fiduciary with respect to management of the Kaiser's Stock held by the Hourly Trust.

In response to these comments, the Department concurs with IFS and has amended Sections III(k) and III(r) of the Definitions by deleting the reference to the PBGC. The Department, however, notes that the reference to the PBGC in these defined terms was included in the list of definitions that was provided by Kaiser in the documents supporting the exemption application.

For further information regarding the comments or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. L–11348) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comments received, the Department has decided to grant the exemption.

**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 does not relieve a fiduciary or other party in interest from certain other provisions of the Act, 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 require, among other things, a fiduciary to discharge his or her 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.

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act.

(3) In accordance with section 408(a) of the Act, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) The exemption is in the interest of the plans and of their participants and beneficiaries; and

(c) The exemption set forth herein is protective of the rights of participants and beneficiaries of the plans.

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions. 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.

**Exemption**

*Section I. Covered Transactions*

The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of the Act shall not apply, effective July 6, 2006, to: (1) The acquisition by the VEBA for Retirees of Kaiser Aluminum (the Hourly VEBA) and by the Kaiser Aluminum Salaried Retirees VEBA (the Salaried VEBA; together, the VEBAs) of certain publicly traded common stock issued by Kaiser (the Stock or the Shares), through an in-kind contribution to the VEBAs by Kaiser of such Stock, for the purpose of prefunding VEBA welfare benefits; (2) the holding by the VEBAs of such Stock acquired pursuant to the contributions; and (3) the management of the Shares, including their voting and disposition, by an independent fiduciary (the Independent Fiduciary) designated to represent the interests of each VEBA with respect to the transactions.

*Section II. Conditions*

This exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following conditions:

(a) An Independent Fiduciary has been appointed to separately represent each VEBA and its participants and beneficiaries for all purposes related to the contributions for the duration of each VEBA's holding of the Shares and will have sole discretionary responsibility relating to the acquisition, holding, disposition, ongoing management, and voting of the Stock. The Independent Fiduciary has determined or will determine, before taking any actions regarding the Shares, that each such action or transaction is in the interests of the VEBA it represents.

(b) The Independent Fiduciary for the Hourly VEBA has discharged or will discharge its duties consistent with the terms of the Hourly Trust Agreement, the Stock Transfer Restriction Agreement, the Certificate of Incorporation, the Registration Rights Agreement, the Hourly Independent Fiduciary Agreement, and successors to these documents.

(c) The Independent Fiduciary for the Salaried VEBA has discharged or will discharge its duties consistent with the terms of the Trust Agreement between the Salaried Board of Trustees (the Salaried Board) and the Salaried Trustee, the Certificate of Incorporation, the Salaried Independent Fiduciary Agreement, and successors to these documents.

(d) The Independent Fiduciaries have negotiated and approved or will negotiate and approve on behalf of their respective VEBAs any transactions between the VEBA and Kaiser involving the Shares that may be necessary in connection with the subject transactions (including, but not limited to, registration of the Shares contributed to the Hourly Trust), as well as the ongoing management and voting of such Shares.

(e) The Independent Fiduciary has authorized or will authorize the Trustee of the respective VEBA to accept or dispose of the Shares only after such Independent Fiduciary determines, at the time of each transaction, that such transaction is feasible, in the interest of the Hourly or Salaried VEBA, and protective of the participants and beneficiaries of such VEBAs.

(f) The VEBAs have incurred or will incur no fees, costs or other charges (other than those described in the Hourly and Salaried Trusts, the Independent Fiduciary Agreements, the Hourly Settlements, the Salaried Settlement Agreement, and the Registration Rights Agreement) as a result of any of the transactions described herein.

(g) The terms of any transactions between the VEBAs and Kaiser have been no less favorable or will be no less favorable to the VEBAs than terms negotiated at arm's length under similar circumstances between unrelated third parties.

(h) The Board of Trustees of the Hourly VEBA (the Hourly Board) and the Board of Trustees of the Salaried Board have maintained or will maintain for a period for six years from the date any Shares are contributed to the VEBAs, any and all records necessary to enable the persons described in paragraph (i) below to determine whether conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Hourly Board and the Salaried Board, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Hourly Board and the Salaried Board shall be subject to the civil penalty that may be assessed under section 502(i) of the Act if the records are not maintained, or are not available for examination as required by paragraph (i) below.

(i)(1) Except as provided in section (2) of this paragraph and not withstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (h) above have been or shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department;

(B) The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the USW) or any duly authorized representative of the USW, and other unions or their duly authorized representatives, as to the Hourly VEBA only;

(C) The Salaried Board or any duly authorized representative of the Salaried Board, as to the Salaried VEBA only;

(D) Kaiser or any duly authorized representative of Kaiser; and

(E) Any participant or beneficiary of the VEBAs, or any duly authorized representative of such participant or beneficiary, as to the VEBA in which such participant or beneficiary participates.

(2) None of the persons described above in subparagraph (1)(B), (C), or (E) of this paragraph (i) has been or shall be authorized to examine the trade secrets of Kaiser, or commercial or financial information that is privileged or confidential.

*Section III. Definitions*

For purposes of this exemption, the term —

(a) ''Certificate of Incorporation'' means the certificate of incorporation of Kaiser as amended and restated as of the Effective Date of Kaiser's Plan of Reorganization.

(b) ''Effective Date'' means July 6, 2006, which is also the effective date of Kaiser's Plan of Reorganization.

(c) ''Hourly Board'' means the Board of Trustees of the Hourly VEBA.

(d) ''Hourly Independent Fiduciary Agreement'' means the agreement between the Hourly Independent Fiduciary and the Hourly Board.

(e) ''Hourly Settlement Agreement'' means the modified collective bargaining agreements with various unions in the form of an agreement under Sections 1113 and 1114 of the United States Bankruptcy Code between the USW and Kaiser.

(f) ''Hourly Trust'' means the trust established under the Trust Agreement between the Hourly Board and the Hourly Trustee, effective June 1, 2004.

(g) ''Hourly VEBA'' means ''The VEBA For Retirees of Kaiser Aluminum'' and its associated voluntary employees' beneficiary association trust.

(h) ''Independent Fiduciary'' means the Independent Fiduciary for the Hourly VEBA (or the Hourly Independent Fiduciary) and the Independent Fiduciary for the Salaried VEBA (or the Salaried Independent Fiduciary). Such Independent Fiduciary is (1) independent of and unrelated to Kaiser or its affiliates; and (2) appointed to act on behalf of the VEBAs with respect to the acquisition, holding, management, and disposition of the Shares. In this regard, the fiduciary will not be deemed to be independent of and unrelated to Kaiser if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Kaiser, other than described herein; (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, other than described herein, for acting as an Independent Fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision, and (3) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from Kaiser exceeds five percent (5%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year. Finally, the Hourly VEBA's Independent Fiduciary is Independent Fiduciary Services, Inc. (IFS), which has been appointed by the Hourly Board; and the Salaried VEBA's Independent Fiduciary is Fiduciary Counselors Inc. (FCI), which has been appointed by the Salaried Board.

(i) ''Independent Fiduciary Agreements'' means the Hourly Independent Fiduciary Agreement and the Salaried Independent Fiduciary Agreement.

(j) ''Kaiser'' means Kaiser Aluminum Corporation and its wholly owned subsidiaries.

(k) ''Registration Rights Agreement'' refers to the Registration Rights Agreement between Kaiser and National City Bank, acknowledged by the Hourly Independent Fiduciary with respect to management of the Stock held by the Hourly Trust.

(l) ''Salaried Board'' means the Board of Trustees of the Kaiser Aluminum Salaried Retirees VEBA.

(m) ''Salaried Independent Fiduciary Agreement'' means the agreement between the Salaried Independent Fiduciary and the Salaried Board.

(n) ''Salaried Settlement Agreement'' means the settlement, in the form of an agreement under Section 1114 of the Bankruptcy Code, between Kaiser and a committee of five former executives of Kaiser appointed pursuant to Section

1114 of the Bankruptcy Code as authorized representatives of current and future salaried retirees.

(o) ''Salaried Trust'' means the trust established under the Trust Agreement between the Salaried Board and the Salaried Trustee, effective May 31, 2004.

(p) ''Salaried VEBA'' means the Kaiser Aluminum Salaried Retirees VEBA and its associated voluntary employees' beneficiary association trust.

(q) ''Shares'' or ''Stock'' refers to shares of common stock of reorganized Kaiser, par value $.01 per share.

(r) ''Stock Transfer Restriction Agreement'' means the agreement between Kaiser and National City Bank, acknowledged by the Hourly Independent Fiduciary with respect to management of the Kaiser's Stock held by the Hourly Trust.

(s) ''Trusts'' means the Salaried Trust and the Hourly Trust.

(t) ''USW'' means the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

(u) ''VEBA'' means a voluntary employees' beneficiary association.

(v) ''VEBAs'' refers to the Hourly VEBA and Salaried VEBA.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change.

In the event of any such change, an application for a new exemption must be made to the Department.

Signed at Washington, DC, this 4th day of January 2006.

**Ivan L. Strasfeld,**

*Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. E6–20729 Filed 12–6–06; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–263]**

## Nuclear Management Company, LLC; Monticello Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

### Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations, Part 50 (10 CFR 50), Appendix J, for Facility Operating Licenses No. DPR–22, issued to Nuclear Management Company (NMC) for operation of the Monticello Nuclear Generating Plant (MNGP), located in Wright County, Minnesota.

### Environmental Assessment

*Identification of the Proposed Action*

The proposed action would exempt NMC from requirements to include main steam isolation valve (MSIV) leakage in (1) the overall integrated leakage rate test measurement required by Section III.A of Appendix J, Option B; and (2) the sum of local leak rate test measurements required by Section III.B of Appendix J, Option B.

The proposed action is in accordance with the licensee's application dated September 15, 2005, for exemption and amendment to the operating license (the latter action is not the subject of this notice).

*The Need for the Proposed Action*

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water-cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J specifies the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate the containment. Option B, Section III.A of Appendix J requires that the overall integrated leak rate must not exceed the allowable leakage (La) with margin, as specified in the Technical Specifications (TS). The overall integrated leak rate, as specified in the Appendix J definitions, includes the contribution from MSIV leakage. By letter dated September 15, 2005, the licensee requested an exemption from Option B, Section III.A, requirements to permit exclusion of MSIV leakage from the overall integrated leak rate test measurement.

Option B, Section III.B of Appendix J requires that the sum of the leakage rates of Type B and Type C local leak rate tests be less than the performance criterion (La) with margin, as specified in the TS. The licensee's September 15, 2005, letter, also requests an exemption from this requirement, to permit exclusion of the MSIV contribution to the sum of the Type B and Type C tests.

The above-cited requirements of Appendix J require that MSIV leakage measurements be grouped with the leakage measurements of other containment penetrations when containment leakage tests are performed. The licensee stated that these requirements are inconsistent with the design of the MNGP facilities and the analytical models used to calculate the radiological consequences of design-basis accidents. At other nuclear plants, the leakage from primary containment penetrations, under accident conditions, is collected and treated by the secondary containment system, or would bypass the secondary containment. However, at MNGP, the leakage from the MSIVs is collected and treated via an alternative leakage treatment (ALT) path having different mitigation characteristics. In performing accident analyses, it is appropriate to group various leakage effluents according to the treatment they receive before being released to the environment, i.e., bypass leakage is grouped, leakage into secondary containment is grouped, and ALT leakage is grouped, with specific limits for each group defined in the TS. The proposed exemption would permit ALT path leakage to be independently grouped with its unique leakage limits.

*Environmental Impacts of the Proposed Action*

The proposed action will not significantly increase the probability or consequences of accidents. The NRC staff has completed its evaluation of the proposed exemption and associated amendment and finds that the calculated total doses remain within the acceptance criteria of 10 CFR 50.67 and General Design Criterion 19, and there is no significant increase in occupational or public radiation exposure. The NRC staff thus concludes that granting the proposed exemption would result in no significant radiological environmental impact.

The proposed action does not affect non-radiological plant effluents or historical sites, and has no other environmental impact. Therefore there are no significant non-radiological impacts associated with the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental