

information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.²⁰

III. Limited Section 406(b) and Section 407(a) Relief for Sales

HSBC represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.²¹ In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.²² Likewise, issues are raised under section 406(a)(1)(D) of the Act where a

²⁰ In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

²¹ In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which First Union or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

²² The applicant represents that where a trust sponsor is an affiliate of HSBC, sales to plans by the sponsor may be exempt under PTE 75-1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if HSBC is not a fiduciary with respect to plan assets to be invested in certificates.

plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, HSBC represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. HSBC represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, HSBC represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

NOTICE TO INTERESTED PERSONS: The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the Federal Register. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, 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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 13th day of September, 1996.

Ivan Strasfeld,

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

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[Prohibited Transaction Exemption 96-69;
Exemption Application No. D-10189, et al.]

**Grant of Individual Exemptions;
Westinghouse Savannah River
Company/Bechtel Savannah River, Inc.
Pension Plan, et al.**

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of

the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

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

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

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

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

Westinghouse Savannah River Company/Bechtel Savannah River, Inc. Pension Plan (the Plan), Located in Aiken, South Carolina

[Prohibited Transaction Exemption 96-69; Exemption Application No. D-10189]

Exemption

The restrictions of section 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(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), 4975(c)(1)(D), and 4975(c)(1)(E) of the Code shall not apply,¹ effective October 15, 1994, to the past and future use by the U. S. Department of Energy (DOE)², acting on behalf of Westinghouse Savannah River Company (WSRC) and Bechtel Savannah River, Inc. (BSRI), parties in interest with respect to the Plan, of portions of DOE's interest in Group Annuity Contract GR-409 (GR-409) issued by Connecticut General Life Insurance Company (CGLIC), an insurance company headquartered in Hartford, Connecticut, to purchase interests for the Plan in CGLIC Group Annuity Contract IN-16111 (IN-16111) for the purpose of funding the benefits under the Plan; provided that:

(1) The use by DOE, acting on behalf of WSRC and BSRI, of portions of DOE's interests in GR-409 to purchase additional interests in IN-16111 on behalf of the Plan has benefited and will benefit the Plan to the same extent, as contributions of cash by DOE to such Plan;

(2) The fair market value of the debits to GR-409 that have occurred or will occur, as a result of the use of portions of GR-409 by DOE to purchase additional interest in IN-16111 on behalf of the Plan, has exactly matched and will exactly match the fair market value of the credits to IN-16111 acquired by the Plan as a result of such purchase transactions;

(3) The Plan has received and will receive interests in IN-16111 that have a fair market value equal to the fair market value of the interests the Plan would have received had DOE or WSRC acquired additional interests in IN-16111 for the Plan for cash;

(4) The value of the expected earnings received by the Plan from the interests in IN-16111 purchased by DOE with portions of GR-409 has been and will be the same, as if those interests were or are purchased with cash;

(5) The named fiduciary of the Plan has determined that the transactions have been and will be prudent, feasible, and in the interest of and protective of the Plan;

(6) CGLIC, an independent, qualified third party, has determined and will continue to determine the fair market value of the interests in GR-409, as of the date of each purchase transaction;

¹ For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

² References to DOE include, where applicable, DOE's predecessors, the Energy Research and Development Administration and the Atomic Energy Commission.

(7) The actuary for the Plan has determined and will continue to determine the minimum funding requirement of the Plan and has determined and will continue to determine the extent to which the amount credited to the Plan's funding standard account by virtue of the use of the interest in GR-409 satisfies the minimum funding requirement;

(8) The actuary of the Plan has monitored and will continue to monitor the transactions on behalf of the Plan, as well as the terms and conditions of the exemption at all times;

(9) No more than 25% of the assets of the Plan has been or will be involved in the transactions;

(10) The Plan has not, nor will the Plan in the future, incur any fees, costs, or other charges or expenses as a result of the transactions; and

(11) If, by the required filing date of the Form 5500 (including extensions) for any year, the aggregate book value³ of the interests in IN-16111 purchased for the Plan is less than the aggregate amount credited to the Plan's funding standard account as a result of such purchases, DOE will (by the filing date of the Form 5500 for such year) purchase an additional interest in IN-16111 for the Plan that has a book value equal to the shortfall or contribute to the Plan cash in the amount of such shortfall.

EFFECTIVE DATE: The exemption is effective, as of October 15, 1994, the date DOE first used, on behalf of WSRC and BSRI, portions of its interests in GR-409 to acquire additional interests in IN-16111 for the Plan.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by September 4, 1996.

The Department received 24 letters from interested persons commenting on the exemption. In addition, a number of interested persons telephoned the Department. These individuals were assisted with their questions by members of the staff of the Office of Exemption Determinations of the Department. With respect to all the written comments submitted by

³ It is represented that the book value of an annuity contract represents the amount contributed to such contract, plus accumulated interest credited to date, less amounts withdrawn from such contract. Fair market value, on the other hand, represents the market value of the general account assets in which a contract is deemed to be invested for accounting purposes.

interested persons, the Department forwarded copies to the applicants and requested that the applicants address the various concerns raised by the commentators in writing. In this regard, it is noted that the number of comments discussed below exceeds the total number of letters from commentators, because numerous letters contained more than one concern. A description of the comments and the applicants' responses are summarized below.

Sixteen (16) commentators neither opposed nor supported the proposed exemption. Rather, these commentators expressed a lack of understanding of the nature of the exemption and asked for a simple and brief explanation. In response to these commentators, the applicants state that, as permitted under the Act, WSRC has elected to satisfy its funding obligations with respect to the Plan over the next several years by permitting DOE to purchase, on behalf of WSRC, interests in a group annuity contract for the Plan. In this regard, the exemption would permit DOE to purchase such group annuity contract interests for the Plan with interests in another annuity contract owned by DOE, rather than with cash.

Other commentators opposed the exemption and raised questions and concerns regarding the transactions described in the Notice. The concerns expressed by these commentators generally related to: (a) The impact of the exemption on the benefits provided under the Plan; (b) the possible detrimental effect of the exemption on the funding of the Plan; and (c) the decline in the book value of IN-16111.

The following summarizes the applicants' responses to these concerns raised by commentators. With respect to (a) above, ten (10) commentators expressed concern that the exemption in some way would eliminate, diminish, or otherwise adversely affect the pensions payable under the Plan.

In response, the applicants state that the exemption pertains only to the funding of the Plan and does not change or affect in any way the pension benefits payable under the Plan. As a result, the applicants represent that the exemption will not affect a participant's eligibility to receive a pension benefit or the amount of pension benefit checks.

With respect to (b) above, nine (9) commentators expressed concern that the exemption would have a detrimental effect on the level of Plan funding or had other questions related to funding. In this regard, one of the commentators expressed a general concern that funding would be reduced. Another opposed the exemption because, "it reduces the net worth of the fund by

moving assets from one part of the plan to another and really does not provide payments into the plan." Two (2) commentators stated concerns that the contributed assets were riskier or could lose their value. Another commentator asked how the minimum funding would be determined. Another commentator expressed a belief that any surplus funding in the Plan should be preserved for the benefit of participants. In the opinion of that same commentator the transactions which are the subject of this exemption would reduce the Plan to the minimum legal funding level. Finally, a single commentator asked a number of questions related to the effect of the transactions on funding.

In response to these comments, the applicants state that the Act expressly permits the sponsor of a pension plan to satisfy its funding obligations to such plan by purchasing interests in one or more annuity contracts. In this regard, the applicants maintain that the exemption does not relate to whether WSRC may fund the Plan by purchasing interests in a group annuity contract instead of purchasing, for example stocks and bonds, but rather, relates to whether such purchases may be made using interests in another annuity contract owned by DOE.

The applicants state that the contributions which are the subject of this exemption are expected to increase, and are expected to maintain, the value of the assets of the Plan to the same extent as if the additional interests in the Plan's annuity contract had been purchased with cash. In this regard, the fair market value of each contribution will be determined by CGLIC, an independent third party. Further, Buck Consultants (Buck), the Plan's actuary, will ensure each year that such contributions satisfy the minimum funding requirements of the Plan.

With respect to the funding level of the Plan, the applicants represent that the Plan is well-funded, with the value of the current assets and receivables exceeding current liabilities by \$73,846,957 as of the end of 1995, and the Plan's portfolio is well-diversified, with approximately 52 percent (52%) of the assets invested in a broad range of equity securities, 34 percent (34%) in IN-16111, 8 percent (8%) in a variety of fixed income securities, and 6 percent (6%) in cash and cash equivalents.

In addition, the applicants state that although there is no reason to expect that the subject transactions will endanger adequate funding of the Plan, additional safeguards exist for participants and beneficiaries under the Act. In this regard, if the value of the Plan's assets becomes inadequate to

meet the liabilities of the Plan, WSRC and DOE would be required to contribute additional amounts to the extent necessary to pay all benefits.

With respect to (c) above, one commentator expressed concern that the book value of IN-16111 had decreased between 1990 and 1994. In addition, the same commentator alleged that in the past DuPont has refused to agree to a proposal similar to the one which is the subject of this exemption.

In response to these comments, the applicants explain that the book value of IN-16111 decreased between 1990 and 1994, because the Plan exercised its option to cash out approximately 16 percent (16%) of the value of that contract each year and reinvested the proceeds in equities and other assets. Furthermore, the applicants represent that the value of the remaining portion of IN-16111 has increased every year and has proven to be a sound investment for the Plan. In response to this commentator's other concern, the applicants represent that they are not aware of any similar transactions with respect to the Plan proposed in the past and rejected by DuPont.

In addition to the comments discussed above, the commentators requested answers to various questions. The questions and the applicants' answers are discussed in the paragraphs below.

First, at least one commentator asked why the Benefits Committee could not be the trustee for all funds. In answer to this question, the applicants state that the role of the Benefits Committee is to serve as the Plan Administrator and named fiduciary with respect to the Plan. The applicants maintain that NationsBank, as a financial institution with significant experience holding and managing assets for its clients, is better qualified to be the Plan's trustee than the Benefits Committee.

Second, a commentator suggested that the Department supervise all exempted transactions. In response, the applicant notes that it may not be administratively feasible for the Department to monitor transactions with respect to which a prohibited transaction exemption is granted. However, the exemption includes several safeguards to protect the Plan and its participants and beneficiaries. For example, CGLIC, an independent third party insurance company, will determine the fair market value of each contribution, ensuring that the contributions will be equal in value to the amount that otherwise would have been paid in cash. Further, Buck, the Plan's actuary, will ensure that the contributions satisfy the minimum

funding requirement of the Plan each year.

Third, another commentator questioned whether the comment period was of sufficient duration. In response to this question, the applicants state that as a general matter applicants for exemption are permitted fifteen (15) days after publication of a proposed exemption in the Federal Register to post and/or to mail the notice of such proposed exemption to all interested persons. Thereafter, all interested persons have not less than thirty (30) days to comment on the proposed exemption and, in certain circumstances, to request a hearing. With regard to the subject exemption, the applicants agreed to post and to mail the Notice more quickly, so that all interested persons would see or receive the Notice not later than thirty (30) days before the end of the comment period.

Fourth, a commentator asked what would happen if the exemption were denied. In response, the applicants state that if the exemption were denied, WSRC or DOE would be required to purchase the annuity interests with cash, to contribute cash directly to the Plan, or to fund the Plan under any other method permitted by the Act.

Seven (7) individual commentators requested a hearing with respect to the exemption. Most of these commentators appear to have requested a hearing because of their belief that the transaction would reduce their retirement benefits. In addition, several commentators requested a hearing but did not state a reason for such request.

In response the applicants believe that given the number of participants and beneficiaries receiving the Notice, the number of requests for hearing is *de minimis*. Moreover, the applicants maintain that none of the few requests for a hearing presents a compelling reason why a hearing should be held. Accordingly, the applicants suggest that a hearing would be counterproductive and unnecessary.

The Department has considered the concerns expressed by the individuals who have requested a hearing and the applicant's written response addressing such concerns. After consideration of the materials provided, the Department does not believe that any issues have been raised which would require the convening of a hearing.

In addition to comments, questions, and requests for hearing from commentators, the Department also received a comment letter, dated August 30, 1996, from the applicants. In this letter, the applicants requested certain modifications to the operant language of the exemption, as proposed, and certain

amendments which, according to the applicants, should have been reflected in the language of the Summary of Facts and Representations (SFR), as published in the Notice in the Federal Register. The applicants' comments on the requested changes to the conditions of the exemption and some of the suggested changes to the SFR are discussed below in an order that corresponds to the appearance of the relevant language in the Notice. The Department acknowledges all other clarifications made by the applicant to the information contained in the SFR. For further information regarding the applicants' comments or other matters discussed herein, interested persons are encouraged to obtain a copy of the exemption application file (D-9915) which is available in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

In their comment letter, the applicants point out that, as described in their application for exemption, the Plan has acquired and will acquire interests in IN-16111 that are equal or greater in value to the additional interests the Plan would have received and will receive had DOE purchased the interests with cash. Because the value of an asset is equal to the present value of expected future returns, the value of the *expected* earnings stream from the transferred interests will be the same as from the interests DOE otherwise would have purchased with cash. However, because the general account assets underlying the interests purchased for the Plan have been and will be different than if the interests were or are purchased with cash, the applicants cannot guarantee that earnings have been and will be precisely the same as if the interests were or are purchased with cash. Accordingly, the applicants request that the language of condition 4, as set forth in the Notice in column 3 on page 40006, should be amended. In this regard, in the quotation below the changes requested by the applicants have been underlined. Accordingly, the amendment should read as follows: "(4) the value of the *expected* earnings received by the Plan from the interests in IN-16111 purchased by DOE with portions of GR-409 *has* been and will be the same, as if those interests were or are purchased with cash." In addition, the applicants suggest that a conforming change also should have been made to similar language, as set forth in paragraph (d) of section 21 of the SFR

in column 3 on page 40010 of the Notice. The Department concurs.

In addition to the change in the operant language of the exemption, the applicants suggest that the SFR should have reflected the following modifications in order to more accurately reflect the record. In this regard, the underlined words or phrases in the passages from the Notice, which are quoted below, contain the applicants' suggested additions to the language of the SFR. Where omissions or substitutions have occurred, the underlined words or phrases in the passages from the Notice, which are quoted below, reflect the applicants' requested changes to the language of the SFR. For the original wording of the SFR, please refer to the Notice, as published in the Federal Register. The Department concurs with all of the applicants' requested modifications to the SFR.

In their comment letter, the applicants expressed concern that the transactions which are the subject of this exemption may be viewed as direct transfers of interests in GR-409 to the Plan by DOE, on behalf of WSRC and BSRI. In order to clarify their position, the applicants requested amendment to the language, as reflected in section 14 of the SFR. Accordingly, the last sentence of the second paragraph of section 14 (column 2, page 40008 of the Notice) should have read: "The applicants are concerned that these transactions may be viewed as contributions by DOE, on behalf of WSRC and BSRI, of interests in GR-409 *directly to the Plan* or in consideration of the purchase of interests in IN-16111 for the Plan."

In the third sentence of the third paragraph of section 14 of the SFR, it is represented that on July 17, 1995, \$4,323,800 of interests at book value in GR-409 were used as consideration to purchase additional interests in IN-16111 for the Plan. The applicants have clarified that the corresponding fair market value of such interests in GR-409 at that time was \$4,365,598. Accordingly, the following footnote, "The fair market value of the interest was \$4,365,598," should have been inserted in the SFR in the third sentence of the third paragraph of section 14 (column 3, on page 40008 of the Notice).

In section 14 of the SFR, it is represented that if the exemption were granted, GR-409 would be exhausted over the next two (2) years (projected to be toward the end of 1997). However, in their comment the applicants indicate that GR-409 may not be exhausted until 1999. Accordingly, the first sentence of the fourth paragraph of section 14 (column 3, on page 40008 of the Notice)

should have read: "DOE wishes to continue, over the next *three (3)* years until GR-409 is exhausted (projected to be towards the *beginning of 1999*), to use GR-409 to satisfy its obligations under the Prime Contract to reimburse WSRC for the cost of funding the Plan."

The applicants have clarified that CGLIC is at all times obligated to pay retirement benefits provided under the Plans, rather than to the Plan. Accordingly, the second sentence of footnote 4 (column 3, on page 40008 of the Notice) should have read: "Thus, CGLIC is at all times obligated to pay retirement benefits *provided under the Plan*, as contractholder of IN-16111, to the extent requested by the Trustee, up to an aggregate amount not to exceed the book value of IN-16111."

In the first sentence of the first paragraph of section 15, it is represented that the applicants did not enter into the transactions knowing that such actions might be prohibited. The applicants maintain that a change in tense is necessary to this sentence in order to make that representation consistent with other representations in that same section. Accordingly, the first sentence of the first paragraph of section 15 (column 1, on page 40009 of the Notice) should have read: "It is represented that neither DOE nor any of the parties on behalf of whom the exemption is sought participated in the past transactions knowing that such *were* prohibited under the Act or under the Code."

In section 17 of the SFR, it is represented that the total percentage of the Plans assets anticipated to be involved in the transactions would be approximately 24 percent (24%). The applicants have clarified that, if the exemption is granted, no more than about 17 percent of the assets of the Plan will be invested in IN-16111, if the portion of IN-16111 that was transferred to the Plan on December 30, 1990 in the trust-to-trust transfer is ignored. Accordingly, the penultimate sentence of section 17 (column 3, on page 40009 of the Notice) should have read, "In this regard, it is anticipated that future uses by DOE of portions of GR-409 will increase the total percentage of Plan assets *that have been or will be* involved in the transactions to approximately 17 percent (17%)." Further, the applicants suggest that at the end of the sentence quoted above the following footnote should have been inserted, "*i.e., it is anticipated that no more than about 17 percent of the Plan's assets will be invested in IN-16111, disregarding the portion of IN-16111 that was transferred to the Plan on December 30, 1990, from the Du Pont Plan in a trust-to-trust transfer.*" In addition, the applicants

suggest that a conforming change should also have been made in paragraph (i) of section 21 (column 3, on page 40010 of the Notice).

Accordingly, after giving full consideration to the record, including the comments by commentators and the comments and responses of the applicants, the Department has determined to grant the exemption, as described and amended herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N-5507, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on Wednesday, July 31, 1996 at 61 FR 40005.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.

Dillard's Marine & Sports Center, Inc. Profit Sharing Plan (the Plan), Located in Anderson, South Carolina

[Prohibited Transaction Exemption 96-70; Exemption Application No. D-10214]

Exemption

The restrictions of sections 406(a) and 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 loan of \$47,962.50 (the Loan) by the Plan from the individual account of Willard M. Dillard, Jr. to Dillard's Marine & Sports Center, Inc., the sponsoring employer of the Plan and a party in interest with respect to the Plan; provided that (1) The terms and conditions of the Loan are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third-party at the time the Loan is consummated; (2) the Loan will at all times be secured by collateral having a value that exceeds 150 percent of its outstanding principal; (3) the Loan will be at all times less than 25 percent of the balance in the individual account maintained in the Plan for William M. Dillard, Jr.; and (4) an independent fiduciary will approve and monitor the transaction and take whatever actions

are necessary to protect the interests of the Plan.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 22, 1996, at 61 FR 37926.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Normike Industries, Inc. Profit Sharing Plan (the Plan), Located in Plainville, Connecticut

[Prohibited Transaction Exemption 96-71; Exemption Application No. D-10239]

Exemption

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 sale by the Plan of certain improved real property located in Plainville, Connecticut to Norman and Diane Stoll (the Stolls), parties in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan incurs no costs or expenses related to the transaction;

(C) The Plan receives a cash purchase price for the Property in the amount of no less than the greater of (1) The Property's fair market value as of the date of the sale, or (2) \$57,500;

(D) Before the transaction is consummated, the Plan has received rental payments of no less than the Property's fair market rental value for each month of the Plan's ownership of the Property in which the Property was occupied by Normike Industries, Inc. (the Employer), the sponsor of the Plan; and

(E) Within 60 days of the publication in the Federal Register of this Notice granting the exemption, the Employer makes final payment to the Internal Revenue Service of any remaining unpaid excise taxes which are applicable under section 4975(a) of the Code by reason of the Employer's lease of the Property from the Plan.

EFFECTIVE DATE: This exemption is effective as of August 20, 1996.

Written Comments

The Department received one written comment and no requests for a hearing with respect to the proposed exemption.

The comment was submitted by the Stolls, who requested that the exemption be effective as of August 20, 1996, the date on which the Stolls consummated the purchase of the Property from the Plan. The Stolls explain that they chose to proceed with the purchase transaction on that date in order to terminate as soon as possible the ongoing lease between the Plan and the Employer. Accordingly, the Department has determined to grant the exemption with an effective date of August 20, 1996.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on July 22, 1996 at 61 FR 37926.

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

Mei Technology Corporation 401(k) Plan (the Plan), Located in Lexington, Massachusetts

[Prohibited Transaction Exemption 96-72; Exemption Application No. D-10281]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of Guaranteed Annuity Contract No. GA-7192, Certificate Nos. 0001-0004 (collectively, the GAC), issued by Mutual Benefit Life Insurance Company, by the Plan to Mei Technology, the sponsoring employer of the Plan and a party in interest with respect to the Plan; provided that (1) The Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expenses from the Sale; and (3) the Plan receives as consideration from the Sale an amount that is equal to the book value of the GAC as of the date of the Sale, as specified in paragraph 5 of the notice of proposed exemption published on July 22, 1996, at FR 37931.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 22, 1996, at FR 37931.

FOR FURTHER INFORMATION CONTACT: Ms. Marianne H. Cole of the Department, 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 or disqualified person from certain other provisions to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 13th day of September, 1996.

Ivan Strasfeld,

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

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NUCLEAR REGULATORY COMMISSION

Docket Nos. 50-250 AND 50-251]

Florida Power and Light Company, Turkey Point Unit 3 and Unit 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-31 and DPR-41, issued to Florida Power and Light Company (the licensee or FPL), for operation of Turkey Point Units 3 and 4 (TP), respectively, located in Dade County, Florida.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to increase allowed core power level from 2200 Megawatts thermal (MWt) to 2300 MWt which is approximately a 4.5 percent increase in rated core power.

The proposed action is in accordance with the licensee's application for amendment dated December 18, 1995, as supplemented on May 3, June 11, July 1, July 3, and August 22, 1996.

The Need for the Proposed Action

The proposed action is needed to allow the licensee to increase the electrical output of each Turkey Point unit by approximately 30 MWe and thus provide additional electrical power to the grid which serves commercial and domestic areas on the Florida Power and Light grid. The thermal power uprate will result in direct displacement of higher cost fossil fuel generation with lower cost nuclear fuel generation.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that no significant change in the environmental impact can be expected for the proposed increase in power. The proposed core uprate is projected to increase the heat rejected to the environment by approximately 4.4 percent over the present power level but is insignificant when compared to the heat load from all four units and the incident solar radiation heat gain to the canal. The thermal loading on the canal from the units is approximately 14×10^9 British thermal units per hour (Btu/hr) and the heat duty increase associated with the uprate will be approximately $.44 \times 10^9$ Btu/hr. This is expected to increase the temperature between inlet and outlet by a maximum of 0.7°F over