responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

Dated: December 7, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–30821 Filed 12–12–01; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Parole Commission

[(Public Law 94–409) (5 U.S.C. Sec. 552b)]

Record of Vote of Meeting Closure

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately 11 a.m. on Thursday, December 6, 2001; at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide one appeal from the National Commissioners' decisions pursuant to 28 CFR section 2.27 and the Approval of the Hearing Examiner Appointment. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Michael J. Gaines, and John R. Simpson.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 6, 2001.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 01–30881 Filed 12–11–01; 10:40 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10852, et al.]

Proposed Exemptions; Rockford Corporation 401(k) Retirement Savings Plan (the Plan) et al.

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 requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffittb@pwba.dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (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, 5 U.S.C. App. 1 (1996), 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.

Rockford Corporation 401(k) Retirement Savings Plan (the Plan) Located in Tempe, AZ

[Application No. D–10852]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) 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).[1] If the exemption is granted, the restrictions of sections 406(a)(1)(D), 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)(D) and (E) of the Code, shall not apply, effective December 30, 1999 until March 15, 2000, to an arrangement, by Rockford Corporation (Rockford), the Plan sponsor, for the reversal of the original purchase of debt securities (the Debentures) previously issued by Rockford (the Reversal Transactions), involving the following transactions affecting the individually-directed accounts in the Plan (the Plan Accounts) of certain Plan participants (the Participants): (1) The purchase, by the Participants, from their Plan Accounts of the Debentures; (2) the distribution in kind of the Debentures by the Plan Accounts to the Participants; (3) the rollover of the Debentures, if distributed in kind to the Participants, into self-directed individual retirement accounts (the IRAs) established by the Participants; and (4) any benefit that may have inured to Rockford by not having to repurchase the Debentures held by the Plan Accounts.

This proposed exemption is subject to the following conditions:

(a) A Form 5330 was filed by Rockford with the Internal Revenue Service (the Service) and all appropriate excise taxes were paid with respect to the Plan's acquisition and holding of the Debentures, as well as for the extension of credit by the Plan to Rockford resulting therefrom.

(b) With respect to each Debenture,

(1) Rockford offered to repurchase such Debentures from each affected Participant's account in the Plan (the Plan Account), at their fair market value, as determined by Arthur Andersen LLP (Arthur Andersen), a qualified, independent appraiser; and

(2) By March 15, 2000 each Debenture was either—(i) repurchased by Rockford; (ii) purchased by or distributed in kind to each Participant whose Plan Account had held such Debentures; and (iii) rolled over, at the election of the Participant, into the Participant's self-directed IRA.

(c) At the time of the Reversal Transactions, each Plan Account received no less than fair market value for the Debentures, which was in excess of their initial cost.

(d) The Plan Accounts paid no fees or commissions in connection with the Reversal Transactions.

(e) Rockford advised each affected Participant in advance of any transaction of the various options available with respect to the divestment of the Debentures from the Participant's Plan Account.

(f) Rockford has maintained, or will cause to be maintained, for a period of six years from the date of such transactions, in a manner capable for audit and examination, such records as are necessary to enable the persons described below in paragraph (g) to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Rockford, the records are destroyed prior to the end of the six year period.

(g)(1) Except as provided in paragraph (2) of this section (g) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (f) are unconditionally available at their customary location for examination during normal business hours by—

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

(B) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any Participant or beneficiary or duly authorized employee or representative of such Participant or beneficiary.

(g)(2) None of the persons described in subparagraphs (g)(1)(B)–(g)(1)(C) shall be authorized to examine the trade secrets of Rockford or commercial or financial information which is privileged or confidential.

Effective Date: If granted, this proposed exemption will be effective between December 30, 1999 and March 15, 2000.

Summary of Facts and Representations

1. The Plan is a self-directed individual account plan intended to meet the requirements under section 404(c) of the Act. As of February 28, 2001, the Plan had 365 participants who exercised investment discretion over their Plan Accounts and total assets of $5,895,662.

2. The Plan is sponsored by Rockford, a designer, manufacturer and distributor of high performance car audio systems. Rockford is incorporated in the State of Arizona and it maintains its principal place of business at 648 S. River Road, Tempe, Arizona. As of December 31, 2000, Rockford had total assets of $66.9 million and shareholders' equity of $46.3 million.

3. On May 1, 1995, Rockford issued a class of convertible subordinated debentures (*i.e.,* the Debentures) worth $1 million to its shareholders which included certain Participants who were also senior employees and officers of Rockford.[2] The Debentures have a maturity date of May 1, 2002 and provide for quarterly payments of interest, at the annualized rate of 8.5 percent. At maturity, the Debentures require a full return of principal. The Debentures are also convertible into common stock at any time before their redemption or maturity at a face value of $10.50 per share.

4. The Participants were free to acquire the Debentures with their personal funds, other savings, or the balances in their Plan Accounts. However, because these Participants did not have sufficient funds to purchase the securities in their personal capacity, they suggested that Rockford amend the Plan's investment options to permit

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

[2] Because of the requirements of the securities laws, the Debentures could only be offered to Rockford's current shareholders or option holders.

such investments by certain Plan Accounts. Therefore, Rockford amended the Plan and only 20 Participants acquired the Debentures for their respective Plan Accounts. It is represented that the acquisition of the Debentures by each Plan Account was based on the exercise of control by the Participant who directed such purchase and was not motivated or influenced by Rockford.

The Debentures were issued in amounts based upon the original principal amounts invested. There was no minimum amount required in connection with such purchases. As noted in the following table, some Participants invested over 25 percent of the assets in their Plan Accounts in the Debentures.[3]

Participant	Plan account balance or employee rollover	Purchase price paid for debentures or face value	Percent of vested balance
R. Trout	$41,668.65	$10,000.00	24
A. Zimmerman	58,984.16	15,755.00	27
G. Church	12,936.47	3,521.00	27
T. Coulson	23,095.67	704.00	3
H. Kane	17,402.39	3,521.00	20
W. Turner	50,301.94	3,521.00	7
A. Gitch	21,441.30	11,056.00	52
H. Parvin (Chris)	36,896.55	5,000.00	14
J. Harris II (Wayne)	53,251.36	39,500.00	74
M. Williams	12,408.85	704.00	6
R. Gentry	14,048.23	1,760.00	13
M. Lowe	8,342.00	2,112.00	25
M. Rudolph	2,589.73	1,300.00	50
L. Ferris	9,975.33	5,000.00	50
M. Albers	40,300.31	3,520.00	9
J. Thompson; Rollover	50,000.00	50,000.00	100
D. Hammerle	5,338.90	1,789.00	34
D. Boshes	13,326.13	7,042.00	53
D. Boshes; Rollover	13,000.00	13,000.00	100
V. Hodson	114.88	114.00	99
D. Richards	7,580.02	4,250.00	56

In the aggregate, the Plan Accounts purchased approximately 18 percent (or $183,169.54) of the $1 million issue while Rockford's other shareholders purchased the remaining 82 percent of the Debentures. The Plan Accounts paid no fees or commissions to Rockford in connection with such acquisitions.

5. During the course of a routine audit of the Plan in March 1999, Ernst & Young, LLP (Ernst & Young), the Plan's accountants, questioned whether the Debentures constituted ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act.[4] Based upon a variety of legal advice, Rockford considered this question and subsequently determined that the Debentures failed to meet the requirements of section 407(e)(2)(B) of the Act because 50 percent of the Debentures were not held by persons which were independent of Rockford.[5] Therefore, Rockford filed a Form 5330 with the Service on April 7, 2000 and paid excise taxes on July 6, 2000 to cover the prohibited transactions arising from the acquisition and holding of the Debentures by the Plan Accounts, as well as in connection with prohibited extensions of credit by the Plan Accounts to Rockford.

6. It is represented that the Debentures were never in default or delinquency and they appreciated significantly in value following their acquisition by the Plan Accounts. Between May 1, 1995 and March 15, 2000, the Participants earned interest payments as follows with respect to the Debentures:

[3] The Department is not providing retroactive exemptive relief with respect to the original acquisition of the Debentures by the Plan Accounts. As stated later in this proposal, Rockford has already paid excise taxes to the Service with respect to prohibited transactions arising in connection with the original acquisition and holding of the Debentures by the Plan Accounts, including prohibited extensions of credit by the Plan Accounts to Rockford.

[4] Section 407(d)(5)(B) of the Act states that the term ''qualifying employer security'' means an employer security which is a marketable obligation (as defined in section 407(e) of the Act). Section 407(e) of the Act states that, for purposes of section 407(d)(5) of the Act, the term ''marketable obligation'' means a bond, debenture, note, or certificate, or other evidence of indebtedness if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by the current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the plan is invested in obligations of the employer or an affiliate of the employer.

[5] According to the exemption application, the purchase of the Debentures was noted in the 1995 financial statements without comment. In the 1996 financial statements, Ernst & Young reportedly questioned whether the Debentures had been offered to a nondiscriminatory group, as required under Code qualification rules. The comment was repeated in the 1997 and 1998 financial statements. In March 1999, Ernst & Young decided to review various regulatory issues related to the Debentures and retained legal counsel for consultation on the discrimination issue and qualifying employer securities matter. However, these issues were resolved with the Service in a closing agreement dated July 19, 2001.

Participant	2d Q '95 (in $s)	3d Q '95—4th Q '99 (in $s)	1st Q '00	Total interest (in $s)
R. Trout	141.67	3,825.00	223.20	3,966.67
A. Zimmerman	223.20	6,026.22	31.59	6,472.62
G. Church	49.88	1,346.76	4.32	1,428.23
T. Coulson	9.97	269.28	31.59	298.53
H. Kane	49.88	1,346.76	.....	1,428.23
W. Turner	49.88	1,346.76	62.53	1,396.64
A. Gitch	156.63	4,228.92	106.25	4,447.90
H. Parvin (Chris)	70.83	1,912.50	.....	2,089.58
J. Harris II (Wayne)	559.58	15,108.84	2.16	15,668.42
M. Williams	9.97	269.28	5.40	281.41
R. Gentry	24.93	673.20	6.48	703.53
M. Lowe	29.92	807.84	7.98	844.24
M. Rudolph	18.42	497.34	.....	523.74
L. Ferris	70.83	1,912.50	.....	1,983.33
M. Albers	49.87	1,346.40	.....	1,396.27
J. Thompson; Rollover	.....	19,125.00	10.98	19,125.00
D. Hammerle	25.35	684.36	.....	720.69
D. Boshes	99.76	4,972.50	.....	5,072.26
D. Boshes; Rollover	.....	2,603.52	.....	2,603.52
V. Hodson	1.62	43.56	.....	45.18
D. Richards	60.21	1,625.76	.....	1,685.97

[1] Figures are approximate.

In addition, an annual fee of $1,000 was either paid by Rockford or the Plan's forfeiture account to The Principal Financial Group, the Plan administrator and recordkeeper, as well as an unrelated party, in connection with the holding of the Debentures by the Plan Accounts.

7. The Debentures were valued on December 16, 1999 by Messrs. James C. Gari, CFA, Manager, Financial Valuation, and Andrew W. Fernandez, Consultant, Financial Valuation, both of whom are employed by the Chicago, Illinois office of Arthur Andersen, which was retained by Rockford as a qualified, independent appraiser. The fees received by Arthur Andersen in connection with the appraisal were paid by Rockford and they represented less than one percent of Arthur Andersen's annual gross income.

In their appraisal report, the appraisers treated the Debentures as a minority interest in the common stock of Rockford because the convertibility feature of the Debentures would permit their conversion into a total of 94,742 shares [6] of common stock (of which 17,435 shares of common stock were allocated to the Plan Accounts), at any time before redemption or maturity. The value of the common stock had increased significantly in value, thus, resulting in a substantial appreciation in the value of the Debentures. Thus, utilizing the Income Approach's discounted cash flow analysis to valuation, the appraisers placed the fair market value of the stock at $20.50 per share, as of November 1, 1999.

Based on the Arthur Andersen appraisal, the total fair market value of the minority interest relating to all of the Debentures was $1,942,211. Of this amount, $357,417.50 was attributed to the Debentures held by the Plan Accounts which can be broken down as follows for each affected Participant:

Participant	Face value	Fair market value	Number of shares
R. Trout	$10,000.00	$19,516.00	952
A. Zimmerman	15,755.00	30,750.00	1,500
G. Church	3,521.00	6,867.00	335
T. Coulson	704.00	1,373.50	67
H. Kane	3,521.00	6,867.50	335
W. Turner	3,521.00	6,867.50	335
A. Gitch	11,056.00	21,566.00	1,052
H. Parvin (Chris)	5,000.00	9,758.00	476
J. Harris II (Wayne)	39,500.00	77,100.50	3,761
M. Williams	704.00	1,373.50	67
R. Gentry	1,760.00	3,423.50	167
M. Lowe	2,112.00	4,120.50	201
M. Rudolph	1,300.00	2,521.50	123
L. Ferris	5,000.00	9,758.00	476
M. Albers	3,520.00	6,867.50	335
J. Thompson; Rollover	50,000.00	97,600.50	4,761
D. Hammerle	1,789.15	3,485.00	170
D. Boshes	7,042.00	13,735.00	670
D. Boshes; Rollover	13,000.00	25,379.00	1,238
V. Hodson	114.00	205.00	10

[6] The 94,742 shares of common stock representing the Debentures constituted 2 percent of Rockford's common stock.

Participant	Face value	Fair market value	Number of shares
D. Richards	4,250.39	8,282.00	404
Totals	183,169.54	357,417.50	17,435

8. Rockford believed that Participants whose Plan Accounts were invested in the Debentures could consider themselves to be adversely affected if the transaction were reversed by Rockford's repurchase of the Debentures. This was because the Participants would lose the future potential increase in value that they had hoped to realize by reason of such investment. Therefore, Rockford advised each Participant, whose Plan Account had been invested in the Debentures, that he or she could elect to (a) have Rockford purchase the Debentures from their respective Plan Account, at fair market value, as determined by a qualified, independent appraiser; (b) purchase the Debentures from his or her respective Plan Account at fair market value or receive an in kind distribution of the Debentures from the Participant's Plan Account; or (c) rollover the Debentures at their fair market value into the Participant's self-directed IRA, if the distribution was in kind. The Participants were further advised that although the choice of alternatives was entirely up to them, the Debentures could not remain in the Plan.[7]

To facilitate a Participant's purchase of Debentures from his or her Plan Account, Rockford also offered to make market rate loans to the Participants. However, no Participants took advantage of Rockford's offer.

For purposes of repurchasing the Debentures, Rockford and the Participants relied upon the Arthur Andersen appraisal to determine fair market value. Thus, between December 30, 1999 and March 15, 2000, the Debentures held by the Plan Accounts were either (a) repurchased by Rockford; (b) purchased by the Participant or distributed in kind to the Participant; or

(c) rolled over, at the election of such Participant, into a self-directed IRA, if the distribution was in kind. The transactions can be summarized as follows:

Participant	Face value	Fair market value	Disposition
R. Trout	$10,000.00	$19,516.00	Rollover[1].
A. Zimmerman	15,755.00	30,750.00	Rollover.
G. Church	3,521.00	6,867.00	Rep. Rockford.[2]
T. Coulson	704.00	1,373.50	Rep. Rockford.
H. Kane	3,521.00	6,867.50	Rep. Rockford.
W. Turner	3,521.00	6,867.50	Rep. Rockford.
A. Gitch	11,056.00	21,566.00	Rep. Rockford.
H. Parvin (Chris)	5,000.00	9,758.00	Rollover.[2]
J. Harris II (Wayne)	39,500.00	77,100.50	Roll/Rep. Part.[3]
M. Williams	704.00	1,373.50	Rep. Rockford.
R. Gentry	1,760.00	3,423.50	Rep. Rockford.
M. Lowe	2,112.00	4,120.50	Rep. Rockford.
M. Rudolph	1,300.00	2,521.50	Rep. Rockford.
L. Ferris	5,000.00	9,758.00	Rollover.
M. Albers	3,520.00	6,867.50	Rollover.
J. Thompson Rollover	50,000.00	97,600.50	Rollover.
D. Hammerle	1,789.15	3,485.00	Rep. Rockford.
D. Boshes	7,042.00	13,735.00	Rollover.
D. Boshes Rollover	13,000.00	25,379.00	Rollover.
V. Hodson	114.00	205.00	Rollover.
D. Richards	4,250.39	8,282.00	Rollover.
Total	183,169.54	357,417.50	

[1] Rollovers include distributions in kind.
[2] Repurchased by Rockford.
[3] Rollover/Repurchased by Participant.

The Plan Accounts paid no fees or commissions in connection with the Reversal Transactions.

9. Rockford believes that its repurchase of the Debentures from the Plan Accounts can be viewed as a ''correction'' of a prior prohibited transaction under section 4975 of the Code.[8] Rockford has, however, requested an administrative exemption from the Department with respect to its arrangement whereby Participants were permitted to (a) purchase the Debentures directly from their Plan Accounts, (b) receive distributions in kind of such Debentures from their Plan Accounts, or (c) roll over such Debentures into self-directed IRAs, if the distribution was in kind. Rockford states that exemptive relief is required to the extent the initial acquisition and

[7] It is represented that the sale of the Debentures to Rockford would not raise any tax issues for the Participants inasmuch as the transaction was simply the reversal of a prior prohibited transaction. It is also represented that the distribution option offered to Participants would pose income tax consequences while the rollover option would not.

[8] In this regard, the Department has no jurisdiction with respect to the meaning of ''correction'' under section 53.4941(e)–1(c)(1) of the Foundation Excise Tax Regulations, which applies to prohibited transactions under section 4975 of the Code by reason of Temporary Pension Excise Tax Regulation 141.4975–13. Under section 53.4941(e)–1(c)(1), any correction pursuant to section 4941 of the Code is not a prohibited act of self-dealing. Therefore, the Department expresses no opinion herein on whether the repurchase of the Debentures by Rockford from the affected Plan Accounts was a correction within the meaning of 53.4941(e)–1(c)(1).

holding of the Debentures by the Plan Accounts (including the extension of credit transaction) were not ''corrected,'' within the meaning of section 4975 of the Code, by the subsequent Participant actions. Additionally, exemptive relief is required to the extent Rockford received a benefit by not having to repurchase any of the Debentures held by the Plan Accounts.

10. To document each Reversal Transaction, Rockford is maintaining for a period of six years from the date of such transaction, records that will enable certain persons, such as employees of the Department or the Service, Plan fiduciaries, Participants or their beneficiaries, to determine whether the conditions of the exemption have been met. Such records are being made available at their customary location for examination during normal business hours.

11. In summary, it is represented that the arrangement satisfied the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Rockford filed a Form 5330 with the Service and paid appropriate excise taxes that were due with respect to the transactions arising during the Plan's ownership of the Debentures;

(b) Rockford offered to repurchase the Debentures from each affected Participant's Plan Account, and by March 15, 2000, each Debenture was either (i) repurchased by Rockford; (ii) purchased by a Participant whose Plan Account had been invested in the Debentures, or (iii) distributed in kind to a Participant whose Plan Account had held the Debentures; or (iii) rolled over, at the election of the Participant into a self-directed IRA, if the distribution was in kind.

(c) Each Plan Account received fair market value for the Debentures, which was an amount in excess of their initial cost.

(d) The fair market value of the Debentures, which was equated to the value of a minority interest in Rockford common stock, was determined by Arthur Andersen, a qualified, independent appraiser.

(e) Rockford will maintain for a period of six years from the date of each Reversal Transaction, in a manner capable for audit and examination, records of the transaction in order that certain persons, such as employees of the Department or the Service, Plan fiduciaries, Participants or their beneficiaries, can determine that the conditions of the exemption have been met.

For Further Information Contact: Ms. Jan D. Broady, U.S. Department of Labor, (202) 219–8881. (This is not a toll-free number.)

Massachusetts Mutual Insurance Company (MassMutual) Located in Springfield, Massachusetts

[Application No. D–10869]

Proposed Exemption

The Department is considering the grant of the following 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).

Section I. Retroactive Exemption for the Purchase of Fund Shares

For the period from April 1, 1995 until the date this proposed exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase by an employee benefit plan (the Client Plan) (directly or through a single customer or pooled separate account or other pooled vehicle) of shares of one or more diversified open-end management investment companies (Fund or Funds) in exchange for Client Plan assets transferred in-kind to a Fund from a single customer or pooled separate account or other pooled vehicle holding plan assets maintained by MassMutual (a Separate Account), where MassMutual or its affiliate is the Fund's investment adviser and a Client Plan fiduciary, provided the following conditions have been met: [9]

(a) No sales commissions, redemption fees, or other fees are paid by the Client Plan in connection with the purchase of Fund shares by a Client Plan.

(b) All transferred assets are either cash or securities for which market quotations are readily available.

(c) The assets transferred in-kind to the Funds constitute the Client Plan's pro rata portion of the assets held by the Separate Account immediately prior to the transfer.

(d) The Client Plan receives Fund shares having a total net asset value equal to the value of the assets transferred by the Client Plan on the date of the transfer, as determined in a single valuation performed in the same manner at the close of the same business day with respect to all Client Plans participating in the transaction on such date, in accordance with the procedures set forth in Rule 17a–7 of the Investment Company Act of 1940 (the 1940 Act) (using sources independent of MassMutual and the Fund) and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets.

(e) An Independent Fiduciary with respect to each Client Plan receives advance written notice of an in-kind transfer and purchase of assets and full written disclosure of information concerning the Funds, including:

(1) A current prospectus for each Fund to which the Separate Account's assets may be transferred, updated as necessary;

(2) A statement describing the investment advisory and other fees to be charged to, or paid by, a Client Plan and the Funds to the Fund Adviser, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees paid by the Client Plan in connection with the Client Plan's investment in the Separate Account;

(3) A statement of the reasons why MassMutual considers such investment to be appropriate for the Client Plan; and

(4) A statement describing whether there are any limitations applicable to MassMutual with respect to which Client Plan assets may be invested in Fund shares, including the nature of the limitations.

(f) The Independent Fiduciary may: (1) Opt-out of the in-kind transfer of the Client Plan's interest in the Separate Account for shares of the Funds (including by selling its interest in a pooled vehicle) without penalty; or (2) approve the in-kind transfer (on the basis of the prospectus and disclosure referred to in paragraph (e) of this Section) consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. Approval for the in-kind transfer of a Client Plan's interest in the Separate Account in exchange for Fund shares may be presumed notwithstanding that MassMutual does not receive any response from a Client Plan pursuant to MassMutual's two written requests (one by certified mail) for such approval, provided that the first such request occurs at least 90 days before the in-kind transfer and the second such request occurs within 45 days thereafter.

(g) MassMutual sends a written confirmation by regular mail or personal delivery to the Independent Fiduciary of

[9] The Department notes that the proposed exemption would not provide relief for any prohibited transactions that may arise in connection with terminating a separate investment account, or permitting certain plans to withdraw from a separate investment account that is not terminating, or liquidating or transferring any plan assets held by the separate investment account.

each Client Plan participating in the in-kind transfer, no later than 105 days after completion of each purchase, containing:

(1) The number of Separate Account units held by the Client Plan immediately before the transfer, and the related per unit value and the total dollar amount of such units; and

(2) The number of Fund shares held by the separate account immediately following the transfer, and the related per share net asset value and the total dollar amount of such shares.

(h) All other dealings between the Client Plan and the Funds are on a basis no less favorable to the Client Plan than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

(i) Conditions (a) and (f) of Section III have been met.

Section II. Prospective Exemption for the Purchase of Fund Shares

If this proposed exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply to the purchase by a Client Plan (directly or through a single customer or pooled separate account or other pooled vehicle) of shares of one or more Fund(s) in exchange for Client Plan assets transferred in-kind to a Fund from a Separate Account, where MassMutual or its affiliate is the Fund's investment adviser and a Client Plan fiduciary, provided that the following conditions are met:

(a) The assets transferred in-kind to the Funds constitute the Client Plan's pro rata portion of the assets held by the Separate Account immediately prior to the transfer. Notwithstanding the foregoing, the allocation among Client Plans of fixed-income securities held by a Separate Account on the basis of each Client Plan's pro rata share of the aggregate value of such securities will not fail to meet the requirements of this subsection if:

(1) The aggregate value of the fixed-income securities does not exceed one percent of the total value of the assets held by the Separate Account immediately prior to the transfer; and

(2) Such securities have the same coupon rate and maturity, and at the time of the transfer, the same credit ratings from nationally recognized statistical rating agencies.

(b) An Independent Fiduciary with respect to each Client Plan receives advance written notice of the in-kind transfer and purchase and full written disclosure of information concerning the Funds including:

(1) The identity of the securities that will be valued in accordance with Rule 17a–7(b)(4) under the 1940 Act;

(2) The identity of any fixed-income securities allocated on the basis of each Client Plan's pro rata share of the aggregate value of such securities pursuant to Section II (a);

(3) Upon request of the Independent Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents are published in the **Federal Register**; and

(4) The date on which the in-kind purchase will take place.

(c) MassMutual sends by regular mail or personal delivery to the Independent Fiduciary of each Client Plan that purchases Fund shares pursuant to the in-kind transfer:

(1) not later than 30 days after the completion of the purchase, a written confirmation containing:

(A) The identity of each security valued in accordance with Rule 17a–7(b)(4) under the 1940 Act;

(B) The current market price, as of the date of the in-kind transfer, of each such security involved in the purchase of Fund shares; and

(C) The identity of each pricing service or market-maker consulted in determining the current market price of such securities; and

(2) not later than 90 days after each in-kind transfer, a written confirmation which contains:

(A) the number of Separate Account units held by such affected Client Plan immediately before the in-kind transfer (and the related per unit value and the aggregate dollar value of the units transferred); and

(B) the number of shares in the Funds that are held by such affected Client Plan following the in-kind transfer (and the related per share net asset value and the aggregate dollar value of the shares received).

(d)(1) MassMutual provides the Independent Fiduciary of each Client Plan holding shares of the Funds with—

(A) A copy of an updated prospectus of such Fund, at least annually; and

(B) Upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) containing a description of all fees paid by the Fund to MassMutual or its affiliates.

(2) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with an affiliate of MassMutual, MassMutual will provide the Independent Fiduciary of such Client Plan at least annually with a statement specifying:

(A) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid to an affiliate of MassMutual by such Fund;

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to MassMutual;

(C) The average brokerage commissions per share, expressed as cents per share, paid to an affiliate of MassMutual by each portfolio of a Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to MassMutual.

(e) The Independent Fiduciary may: (1) opt-out (including by selling its interest in a pooled vehicle) of the in-kind exchange of the Client Plan's interest in the Separate Account for shares of the Funds without penalty; or (2) approve the in-kind transfer (on the basis of the prospectus and disclosure referred to in paragraph (b) of this Section and paragraph (e) of Section I) consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. Approval for the in-kind transfer of a Client Plan's interest in the Separate Account in exchange for Fund shares may be presumed notwithstanding that MassMutual does not receive any response from a Client Plan pursuant to MassMutual's two written requests (one by certified mail) for such approval, provided that the first such request occurs at least 90 days before the in-kind transfer and the second such request occurs within 45 days thereafter.

(f) All of a Client Plan's assets held in a Separate Account (other than Fund shares already held in the Account) are transferred in-kind to one or more of the Funds in exchange for Fund shares, except that any Plan assets in the Separate Account which are not suitable for acquisition by the Funds shall be liquidated as soon a reasonably practicable, and the cash proceeds shall be invested directly in shares of the Funds.

(g) The authorization described in paragraph (e) of this section is terminable at will by the Independent Fiduciary of a Client Plan, without penalty to such Client Plan. Such termination will be effected by MassMutual redeeming the shares of the Fund(s) held by the affected Client Plan or selling its interest in a Separate Account, in one business day, provided

that if, due to circumstances beyond the control of MassMutual, the redemption cannot be executed within one business day, MassMutual shall have one additional business day to complete such redemption.

(h) Conditions (a), (b), (d), (e), and (h) of Section I, Conditions (a) and (e) of Section III, and Conditions (a) and (b) of Section V have been met.

Section III. Retroactive Exemption for the Receipt of Fees

For the period from April 1, 1995 until the date this proposed exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply to the receipt of fees by MassMutual from the Funds for acting as an investment adviser for such Funds, as well as for providing other services to the Funds which are ''Secondary Services'', as defined in Section VI(i), in connection with the investment by the Client Plans for which MassMutual serves as a fiduciary in shares of the Funds, provided that the following conditions are met:

(a) As to each Client Plan, the combined total of all fees received by MassMutual for the provision of services to the Client Plan, and for the provision of services to a Fund in which a Client Plan holds shares, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value of such shares, as defined in Section VI(g), at the time of the transaction and is the same price that would have been paid or received for the shares by any other investor at that time.

(c) Neither MassMutual, other than in its capacity as agent for the Funds, nor any officer or director of MassMutual, purchases or sells shares of the Funds from or to any Client Plan.

(d) The Independent Fiduciary approves the fees to be paid by the Funds to MassMutual as such fees relate to:

(1) Fund shares purchased by a Client Plan for cash;

(2) Fund shares purchased by a Client Plan pursuant to an in-kind transfer (upon the Independent Fiduciary's consideration of the information described in paragraph (e) of Section I);

(3) the addition of a Secondary Service (as defined in Section V (i)) provided by MassMutual to the Fund for which a fee is charged, or an increase in the rate of any fee paid by the Funds to MassMutual for any Secondary Service that results either from an increase in the rate of such fee or from a decrease in the number or kind of services performed by MassMutual for such fee over an existing rate for such Secondary Service that had been authorized by the Independent Fiduciary of a Client Plan. The approvals required in this paragraph may be presumed notwithstanding that MassMutual does not receive any response from a Client Plan to MassMutual's two written requests (one by certified mail) for approval of a change in the rates of fees provided that the first such request occurs at least 90 days before the in-kind transfer and the second such request occurs within 45 days thereafter. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by a Client Plan and need not relate to any other aspects of such investment.

(e) The Fund Adviser does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the acquisition of Fund shares in exchange for Client Plan assets.

(f) The Plan does not pay any plan-level investment management, investment advisory or similar fee with respect to the Client Plan assets invested in such shares for the entire period of such investment. This condition does not preclude the payment of investment advisory fees by an investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940.

(g) On an annual basis, MassMutual provides the Independent Fiduciary of each Client Plan holding shares of the Funds with—

(1) A copy of an updated prospectus of such Fund; and

(2) Upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) containing a description of all fees paid by the Fund to MassMutual or its affiliates.

(3) Oral or written responses to inquiries of the Independent Fiduciary as they arise.

(h) Conditions (a), (e), (h) and (i) of section I, Condition (b) of Section II, and Conditions (a) and (b) of Section V have been met.

Section IV. Prospective Exemption for the Receipt of Fees

If this proposed exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply to the receipt of fees by MassMutual from the Funds for acting as an investment adviser for such Funds, as well as for providing other services to the Funds which are ''Secondary Services,'' as defined in Section VI(i), in connection with the investment by the Client Plans for which MassMutual serves as a fiduciary in shares of the Funds, provided that the following conditions are met:

(a) For each Client Plan using the fee structure described in paragraph (d)(2) of this Section with respect to investments in a particular Fund, the Independent Fiduciary of the Client Plan receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by MassMutual to the Funds for investment advisory services.

(b) All authorizations made by an Independent Fiduciary regarding investments in a Fund and the fees paid to MassMutual are subject to an annual reauthorization, wherein any such prior authorization referred to in Section III(d) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by MassMutual of written notice of termination. The Independent Fiduciary must be supplied with a Termination Form, at the times specified in paragraph (c) of this Section, with instructions on the use of the form, including the following information:

(1) The authorization is terminable at will by any of the Client Plans, without penalty to such Client Plans, upon receipt by MassMutual of written notice from the Independent Fiduciary; and

(2) Failure by the Independent Fiduciary to return the Termination Form on behalf of a Client Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to the requirements of this Section, and will result in the continuation of the authorizations of MassMutual to engage in the transactions on behalf of such Client Plan.

(c) The Independent Fiduciary is supplied with a Termination Form no less than annually; provided that the Termination Form need not be supplied to the Independent Fiduciary pursuant to this paragraph sooner than six months after such Termination Form is supplied pursuant to paragraph (e) below, except to the extent required to disclose an additional service or an increase in fees.

(d) Each Client Plan satisfies either (but not both) of the following:

(1) For a Client Plan for which MassMutual serves as a non-discretionary trustee, the Plan does not pay any Plan-level investment management fees, investment advisory fees, or similar fees to MassMutual with respect to Client Plan assets invested in shares of the Funds. This condition does not preclude the payment of investment advisory fees, or similar fees, by a Fund to MassMutual under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act, nor does it preclude the payment of fees for Secondary Services to MassMutual pursuant to a duly adopted agreement between MassMutual and the Funds.

(2) For a Client Plan for which MassMutual serves as a discretionary fiduciary (*i.e.,* a trustee or investment manager), such Client Plan pays MassMutual an investment advisory fee based on total Client Plan assets from which a credit had been subtracted representing such Client Plan's *pro rata* share of all investment advisory fees paid by the Funds. This condition does not preclude the payment of fees for Secondary Services to MassMutual pursuant to a duly adopted agreement between MassMutual and the Funds.

(e)(1) For each Client Plan using the fee structure described in paragraph (d)(1) of this Section with respect to investments in a particular Fund, an increase in the rate of fees paid by the Fund to MassMutual regarding any investment management services, investment advisory services, or similar services that MassMutual provides to the Fund over an existing rate for such services that had been authorized by an Independent Fiduciary in accordance with paragraph (d) of Section III; or

(2) For any Client Plan under this exemption, an addition of a Secondary Service (as defined in Section V (i)) provided by MassMutual to the Fund for which a fee is charged, or an increase in the rate of any fee paid by the Funds to MassMutual for any Secondary Service that results either from an increase in the rate of such fee or from a decrease in the number or kind of services performed by MassMutual for such fee over an existing rate for such Secondary Service that had been authorized by the Independent Fiduciary of a Client Plan in accordance with paragraph (d) of Section III—

MassMutual will, at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Independent Fiduciary of the Client Plan. Such notice shall be accompanied by a Termination Form with instructions as described above.

(f) Conditions (a), (e) and (h) of Section I, Conditions (b) and (d) of Section II, Conditions (a), (b), (c), (d), (e), and (g) of Section III, and Conditions (a) and (b) of Section V have been met.

Section V. General Conditions

(a) MassMutual maintains for a period of six years the records necessary to enable the persons described in paragraph (b) of this section to determine whether the conditions of this exemption, and the proper crediting of fees described in paragraph (d)(2) of Section IV, have been met, except that:

(1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of MassMutual, the records are lost or destroyed prior to the end of the six-year period; and

(2) no party in interest other than MassMutual shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) below and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (a) in this section are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) above shall be authorized to examine trade secrets of MassMutual, or commercial or financial information that is privileged or confidential.

Section VI. Definitions

For purposes of this proposed exemption:

(a) An ''affiliate'' of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person.

(2) Any officer, director, employee or relative of such person, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term ''Client Plan'' means a pension plan described in 29 CFR 2510.3–2, a welfare benefit plan described in 29 CFR 2510.3–1, and a plan described in section 4975(e)(1) of the Code.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''fixed income security'' means any interest-bearing or discounted government or corporate debt security with a face amount of $1,000 or more that obligates the issuer to pay the holder a specified sum of money, and to repay the principal amount of the loan at maturity.

(e) The term ''Fund'' or ''Funds'' means any diversified open-end management investment company or companies registered under the Adviser's Act for which MassMutual or its affiliates serves as an investment adviser, and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other secondary service (as defined in paragraph (j) of this section).

(f)(1) The term ''Independent Fiduciary'' means a fiduciary of a Client Plan who is unrelated to, and independent of, MassMutual. For purposes of this exemption, a Client Plan fiduciary will be deemed to be unrelated to, and independent of, MassMutual if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, II, III, or IV is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of MassMutual and represents that such fiduciary shall advise MassMutual if those facts change.

(2) Notwithstanding anything to the contrary in this Section VI(f), a fiduciary is not independent if:

(i) such fiduciary directly or indirectly controls, is controlled by, or

is under common control with the Insurer;

(ii) such fiduciary directly or indirectly receives any compensation or other consideration from MassMutual for his or her own personal account in connection with any transaction described in this exemption;

(iii) any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of MassMutual, responsible for the transactions described in Section I, II, III or IV is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Client Plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I, II, III or IV. However, if such individual is a director of MassMutual or of the responsible fiduciary and if he or she abstains from participation in the decision to authorize or terminate authorization for transactions described in Section I, II, III or IV, then Section VI(f)(2)(iii) shall not apply.

(g) The term ''Net Asset Value'' means the amount calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and Statement of Additional Information, and other assets belonging to each of the portfolios in such Fund, less the liabilities chargeable to each portfolio, by the number of outstanding shares.

(h) The term ''pooled separate account'' means a pooled investment fund maintained by MassMutual or an affiliate for the collective investment of assets attributable to two or more plans maintained by unrelated employers.

(i) The term ''secondary service'' means a service provided by massMutual or an affiliate to a Fund other than investment management, investment advisory or similar services.

(j) The term ''security'' shall be defined by section 2(36) of the Adviser's Act, as amended, 15 U.S.C. 80a–2(36) (1996).

(k) The term ''Fund Adviser'' means (i) any affiliate of MassMutual which serves as an investment adviser to a Fund, and (ii) any affiliate of an investment adviser identified in subsection (i).

(l) The term ''Termination Form'' means the form supplied to the Independent Fiduciary, at the times specified above, which expressly provides an election to the Independent Fiduciary to terminate on behalf of the Client Plans the authorizations described in Paragraph (b) of Section IV. Such Termination Form may be used at will by the Independent Fiduciary to terminate such authorization without penalty to the Client Plans and to notify MassMutual in writing to effect such termination by redeeming the shares of the Fund held by the Client Plans requesting termination by the close of the business day following the date of receipt by MassMutual, whether by mail, hand delivery, facsimile or other available means at the option of the Independent Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of MassMutual, the redemption cannot be executed within one business day, MassMutual shall have one additional business day to complete such redemption.

Summary of the Facts and Representations

1. The applicant is MassMutual, a mutual life insurance company organized in 1851. MassMutual, either directly or through its affiliates, offers, among other things, asset accumulation products, employee benefit services, and investment management services. MassMutual is registered under the Investment Advisers Act of 1940, as amended (the Advisers Act) and is an adviser for certain mutual funds.

MassMutual maintains numerous separate investment accounts in which certain plan participants invest. These accounts are advised and/or subadvised by MassMutual, or by a MassMutual affiliate such as OppenheimerFunds, Inc., HarbourView Asset Management Corporation, Trinity Investment Management Corporation, and David L. Babson and Company. MassMutual represents that, while its separate investment accounts purchase portfolio securities directly, most separate investment accounts also purchase mutual fund shares, including shares of Funds advised by non-affiliated third party managers. The applicant states that as the investment performances of the unaffiliated Funds change over time, MassMutual may desire to replace the manager of such a Fund. This involves, MassMutual states, selling shares of the unaffiliated Fund (and incurring certain transaction costs) and acquiring shares of a different Fund (and thus incurring additional transaction costs).

MassMutual represents that, in light of the above, it is more economical, more efficient, and less unwieldy to keep the assets of a separate investment account in proprietary Funds and, to the extent necessary, change the Funds' subadvisers. The preferable way to accomplish this, MassMutual states, is to: (1) Take a distribution of the unaffiliated Fund shares in-kind; (2) transfer the unaffiliated Fund shares to a proprietary Fund; and (3) either: (i) hire the prior adviser as a subadviser; (ii) hire a new adviser as the subadiviser; or (iii) manage the assets of the proprietary Fund through affiliates.[10] The applicant states that no brokerage commissions or other remuneration is charged to the Client Plans in connection with such an asset transfer as any such costs or expenses are paid by MassMutual.

2. The applicant therefore seeks an exemption to permit the in-kind transfer of the assets held by separate investment accounts maintained by MassMutual in exchange for shares of certain mutual funds for which MassMutual or its affiliates serves as an investment adviser or may provide some other secondary service. This involves, therefore, the in-kind transfer of portfolio securities (representing the Client Plans' interest in certain separate investment accounts) to the Funds in exchange for the transfer of shares of the Funds to the separate investment accounts.[11] The applicant also seeks relief for the receipt of fees by MassMutual for acting as an investment adviser for the Funds, and for providing certain ''secondary services'' to the Funds.[12]

MassMutual represents that the in-kind transfer transactions described herein are designed to comply with the Adviser's Act and Prohibited Transaction Exemption (PTE) 77–4 and PTE 97–41, as applicable.[13] MassMutual notes, however, that such transactions involve circumstances which differ slightly from those presented in either PTE 77–4 or PTE 97–41.[14] In this regard,

[10] The Department is expressing no opinion in this proposed exemption regarding the application of ERISA to the in-kind distribution of unaffiliated Fund shares.

[11] MassMutual represents that an in-kind transfer may involve, for example, a separate investment account's receipt of securities (pursuant to an in-kind distribution) from a mutual fund maintained by unaffiliated parties; followed by the transfer of such securities from the separate investment account to mutual funds advised by affiliates of MassMutual (an potentially subadvised by an unaffiliated investment adviser.

[12] The applicant represents that there will be no increase in fees paid by the Client Plans as a result of the in-kind transfer.

[13] MassMutual represents that while collective investment funds and other registered investment advisers have been granted exemptions to permit similar in-kind transfers, many insurance companies have relied on PTE 77–4 or other exemptions to convert separate investment accounts to mutual funds. In this regard, the Department is expressing no view as to the availability of this class exemption for the in-kind transfer of separate investment account assets in exchange for mutual fund shares.

[14] PTE 77–4, 42 FR 18732 (Apr. 8, 1977) permits the purchase or sale by a plan of shares of a registered investment company in situations where

the applicant points out that, for purposes of the exemption as proposed, approval of an in-kind transfer by an Independent Fiduciary may occur in writing and, additionally, approval may be in the form of ''negative consent''. Under the ''negative consent'' arrangement, approval for the in-kind transfer of a Client Plan's interest in the Separate Account will be presumed if MassMutual does not receive any response from a Client Plan to MassMutual's two written requests (one by certified mail) for such approval to the extent such requests are made prior to an in-kind transfer.

3. MassMutual notes that, with respect to the types of transactions described herein, the Securities and Exchange Commission (SEC) Rule 17a–7 (Rule 17a–7) permits transfers involving only those securities for which market quotations are readily available and which do not include restricted securities (such as those described by SEC Rule 144) or other securities for which market quotations are not readily available.[15] Therefore, MassMutual represents that, to the extent the Independent Fiduciary of a Client Plan approves the investment in the Funds, the purchase of Fund shares by the separate investment account has been/will be accomplished in accordance with Rule 17a–7 and the procedures adopted by the Fund's board of directors pursuant to such Rule.

Among the conditions of Rule 17a–7 is the requirement that the transaction be effected at the ''independent current market price'' for the security involved.[16] In this regard, MassMutual represents that the ''independent current market price'' for the types of separate investment account securities involved in the transaction is determined as follows:

(A) If the security is a ''reported security'' as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act) (17 CFR 240.11Aa3–1), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System); or, if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act) (17 CFR 240.11Ac1–1), as of the close of business on the separate investment account valuation date.

(B) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or, if there is no reported transactions on such exchange that day, the average of the highest current independent bid and the lowest current independent offer on the exchange as of the close of business on the separate investment account valuation date.

(C) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and the lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the separate investment account valuation date.

(D) For all other securities, the average of the highest current independent bid and the lowest current independent offer determined on the basis of reasonable inquiry from at least three independent sources as of the close of business on the separate investment account valuation date.

MassMutual represents that these valuation conditions are objective and allow for review by independent parties. The applicant additionally states that the same values are used to determine the amount of securities transferred from a separate investment account and the amount of securities received by a Fund. Therefore, according to the applicant, the total net asset value of the Fund shares received by the separate investment account, or the separate investment account on behalf of the approving Client Plans, is equal in value to the Client Plan's share of the assets of the separate investment account exchanged for shares of the Fund on the date of transfer.

4. MassMutual represents that, to the extent an Independent Fiduciary does not approve the transaction, a reasonable period of time is given for the liquidation of the Client Plan's interest in the separate investment account. According to the applicant, this may be done either in cash, in-kind or through the transfer to another separate investment account.[17] Thereafter, MassMutual states, the remaining separate investment account assets are transferred to the corresponding Funds on behalf of the Client Plans approving the transaction.

5. Although MassMutual will generally divide the assets held in a separate investment account among the Client Plans on a pro rata basis, in some instances, the separate investment account may hold ''small investments'' in fixed-income securities that are not divisible, or that can be divided only at substantial cost.[18] In these situations, solely for purposes of the prospective relief requested herein, MassMutual will treat equivalent ''small investment'' fixed income securities as fungible for allocation purposes if such securities have the same coupon rates, maturities and credit ratings at the time of the transaction.[19] MassMutual will allocate such fixed-income securities among the Client Plans in a manner such that each receives its pro rata share of the value of such securities.[20]

6. MassMutual represents that the proposed exemption is in the interest of participants and beneficiaries because it provides for Client Plan investment in Fund shares and allows for such Funds to be managed by different managers over time, without requiring the costs attendant to asset liquidation. MassMutual additionally represents that the proposed exemption is protective of participants and beneficiaries in that it requires notice to, and consent of, an independent fiduciary. MassMutual

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the investment adviser of the investment company is also a fiduciary with respect to the plan. PTE 97–41, 62 FR 42830 (Aug. 8, 1997), permits a plan to purchase shares of a registered open-end investment company in an in-kind exchange for the plan's collective investment fund assets where the bank or plan adviser of the fund is also a fiduciary of the plan.

[15] MassMutual retains ongoing responsibilities under ERISA's general standards of fiduciary conduct with respect to plans electing to remain as investors in the separate investment account and with respect to other aspects of the transfers.

[16] Rule 17a–7 also includes the following requirements: (a) the transaction must be consistent with the investment objectives and policies of the Fund, as described in its registration statement; (b) the security that is the subject of the transaction must be one for which market quotations are readily available; (c) no brokerage commissions or other remuneration may be paid in connection with the transaction; and (d) the Fund's board of directors (including a majority of those directors who are independent of the Fund's investment adviser) must adopt procedures to ensure that the requirements of Rule 17a–7 are followed, and determined no less frequently than quarterly that the transactions during the preceding quarter were in compliance with such procedures.

[17] In these situations, Client Plans will receive, prior to the transfer date, cash or their pro rata portions of each separate investment account asset. To the extent a Client plan seeks to transfer its interest to another separate investment account, such transfer will occur without cost or penalty.

[18] This would apply in the case of a separate investment account which held portfolio securities and did not purchase shares of a mutual fund. These investments will typically be issued in units of $1,000 or more.

[19] In order to establish what constitutes ''small investments'' MassMutual proposes that this exception from the general pro rata division rule be available only for investment positions in fixed-income securities which, in the aggregate, constitute no more than one (1) percent of the separate investment account's assets. This one (1) percent limit will ensure that the ''small investment'' positions in the fixed-income securities will represent a de minimis portion of the overall assets held by the separate investment account at the time of the transactions.

[20] MassMutual represents that the valuation of fixed income securities will be performed in accordance with Rule 17a–7.

represents that the exemption is administratively feasible in that the values given the Fund shares and the separate account securities are objectively calculated in accordance with securities laws and in accordance with procedures approved by the Fund's board of directors pursuant to such laws.

7. MassMutual requests retroactive relief for the purchase by the Client Plan (directly or through a single customer or pooled separate account or other pooled vehicle) of shares of one or more Funds in exchange for assets of the Client Plan transferred in-kind from a Separate Account. MassMutual states that such purchases met the criteria of section 408(a) of the Act since, among other things:

(a) No sales commissions, redemption fees, or other fees were paid by the Client Plan.

(b) All transferred assets were either cash or securities for which market quotations were readily available.

(c) The assets transferred in-kind to the Funds constituted the Client Plan's pro rata portion of the assets held by the Separate Account immediately prior to the transfer.

(d) The Client Plan received Fund shares having a total net asset value equal to the value of the assets transferred by the Client Plan on the date of the transfer, as determined in a single valuation performed in the same manner at the close of the same business day with respect to all Client Plans participating in the transaction on such date, in accordance with the procedures set forth in Rule 17a–7 of the 1940 Act (using sources independent of MassMutual and the Fund) and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets.

(e) An Independent Fiduciary with respect to each Client Plan received advance written notice of an in-kind transfer and purchase of assets and full written disclosure of information concerning the Funds, including:

(1) A current prospectus for each Fund to which the Separate Account's assets may be transferred, updated as necessary;

(2) A statement describing the investment advisory and other fees to be charged to, or paid by, a Client Plan and the Funds to the Fund Adviser, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees paid by the Client Plan in connection with the Client Plan's investment in the Separate Account;

(3) A statement of the reasons why MassMutual considered such investment to be appropriate for the Client Plan; and

(4) A statement describing whether there were any limitations applicable to MassMutual with respect to which Client Plan assets would be invested in Fund shares, including the nature of the limitations.

(f) The Independent Fiduciary was allowed the opportunity to: (1) Opt-out (including by selling its interest in a pooled vehicle) of the in-kind transfer of the Client Plan's interest in the Separate Account for shares of the Funds without penalty; or (2) approve the in-kind transfer (on the basis of the prospectus and disclosure referred to in paragraph (e) of Section I) consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. In this regard, approval for the in-kind transfer of a Client Plan's interest in the Separate Account was presumed notwithstanding that MassMutual did not receive any affirmative response from a Client Plan pursuant to MassMutual's two written requests (one by certified mail) for such approval, provided that the first such request occurred at least 90 days before the in-kind transfer and the second such request occurred within 45 days thereafter.

(g) MassMutual sent a written confirmation by regular mail or personal delivery to the Independent Fiduciary of each Client Plan participating in the in-kind transfer, no later than 105 days after completion of each purchase, containing:

(1) The number of Separate Account units held by the Client Plan immediately before the transfer, and the related per unit value and the total dollar amount of such units; and

(2) The number of Fund shares held by the separate account immediately following the transfer, and the related per share net asset value and the total dollar amount of such shares.

(h) All other dealings between the Client Plan and the Funds were on a basis no less favorable to the Client Plan than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

8. MassMutual also requests prospective relief for the purchase by the Client Plan (directly or through a single customer or pooled separate account or other pooled vehicle) of shares of one or more Funds in exchange for assets of the Client Plan transferred in-kind from a Separate Account. MassMutual states that such a purchase meets the criteria of section 408(a) of the Act since, among other things:

(a) The assets transferred in-kind to the Funds will constitute the Client Plan's pro rata portion of the assets held by the Separate Accounts immediately prior to the transfer. Notwithstanding the foregoing, the allocation among Client Plans of fixed-income securities held by a Separate Account on the basis of each Client Plan's pro rata share of the aggregate value of such securities will not fail to meet the requirements of this subsection if:

(1) The aggregate value of the fixed-income securities does not exceed one percent of the total value of the assets held by the Separate Account immediately prior to the transfer; and

(2) Such securities have the same coupon rate and maturity, and at the time of the transfer, the same credit ratings as provided from nationally recognized statistical rating agencies.

(b) An Independent Fiduciary with respect to each Client Plan will receive advance written notice of the in-kind transfer and purchase and full written disclosure of information concerning the Funds including:

(1) The identity of the securities that will be valued in accordance with Rule 17a–7(b)(4) under the 1940 Act;

(2) The identity of any fixed-income securities allocated on the basis of each Client Plan's pro rata share of the aggregate value of such securities;

(3) Upon request of the Independent Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents are published in the **Federal Register**; and

(4) The date on which the in-kind purchase will take place.

(c) MassMutual will send by regular mail or personal delivery to the Independent Fiduciary of each Client Plan that purchases Fund shares pursuant to the in-kind transfer:

(1) Not later than 30 days after the completion of the purchase, a written confirmation containing:

(A) The identity of each security valued in accordance with Rule 17a–7(b)(4) under the 1940 Act;

(B) The current market price, as of the date of the in-kind transfer, of each such security involved in the purchase of Fund shares; and

(C) The identity of each pricing service or market-maker consulted in determining the current market price of such securities; and

(2) Not later than 90 days after each in-kind transfer, a written confirmation which contains:

(A) The number of Separate Account units held by such affected Client Plan immediately before the in-kind transfer (and the related per unit value and the

aggregate dollar value of the units transferred); and

(B) The number of shares in the Funds that are held by such affected Client Plan following the in-kind transfer (and the related per share net asset value and the aggregate dollar value of the shares received).

(d)(1) MassMutual will provide the Independent Fiduciary of each Client Plan holding shares of the Funds with—

(A) A copy of an updated prospectus of such Fund, at least annually; and

(B) Upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) containing a description of all fees paid by the Fund to MassMutual or its affiliates.

(2) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with an affiliate of MassMutual, MassMutual will provide the Independent Fiduciary of such Client Plan at least annually with a statement specifying:

(A) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid to an affiliate of MassMutual by such Fund;

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to MassMutual;

(C) The average brokerage commissions per share, expressed as cents per share, paid to an affiliate of MassMutual by each portfolio of a Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to MassMutual.

(e) The Independent Fiduciary may: (1) Opt-out (including by selling its interest in a pooled vehicle) of the in-kind exchange of the Client Plan's interest in the Separate Account for shares of the Funds without penalty; or (2) approve the in-kind transfer (on the basis of the prospectus and disclosure referred to in paragraph (b) of section II and paragraph (e) of Section I) consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. In this regard, approval for the in-kind transfer of a Client Plan's interest in the Separate Account in exchange for Fund shares may be presumed notwithstanding that MassMutual does not receive any response from a Client Plan pursuant to MassMutual's two written requests (one by certified mail) for such approval, provided that the first such request occurs at least 90 days before the in-kind transfer and the second such request occurs within 45 days thereafter.

(f) All of a Client Plan's assets held in a Separate Account (other than Fund shares already held in the Account) will be transferred in-kind to one or more of the Funds in exchange for Fund shares, except that any Plan assets in the Separate Account which are not suitable for acquisition by the Funds will be liquidated as soon a reasonably practicable, and the cash proceeds will be invested directly in shares of the Funds.

(g) The authorization described in paragraph (e) of Section II will be terminable at will by the Independent Fiduciary of a Client Plan, without penalty to such Client Plan. Such termination will be effected by MassMutual redeeming the shares of the Fund(s) held by the affected Client Plan or selling its interest in a Separate Account in one business day, provided that if, due to circumstances beyond the control of MassMutual, the redemption cannot be executed within one business day, MassMutual will have one additional business day to complete such redemption.

9. MassMutual requests retroactive relief for the receipt of fees by MassMutual from the Funds, for acting as an investment adviser for such Funds, as well as for providing other services to the Funds which are ''Secondary Services,'' as defined in Section VI(i), in connection with the investment by the Client Plans for which MassMutual serves as a fiduciary in shares of the Funds. MassMutual states that such receipt of fees meets the criteria of section 408(a) of the Act since, among other things:

(a) As to each Client Plan, the combined total of all fees received by MassMutual for the provision of services to the Client Plan, and for the provision of services to a Fund was not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(b) The price paid or received by a Client Plan for shares in a Fund was the net asset value of such share, as defined in Section VI(g), at the time of the transaction and was the same price that would have been paid or received for the shares by any other investor at that time.

(c) Neither MassMutual, other than in its capacity as agent for the Funds, nor any officer or director of MassMutual, purchases or sells shares of the Funds from or to any Client Plan.

(d) The Independent Fiduciary approved the fees to be paid by the Funds to MassMutual as such fees related to:

(1) Fund shares purchased by a Client Plan for cash;

(2) Fund shares purchased by a Client Plan pursuant to an in-kind transfer (upon the Independent Fiduciary's consideration of the information described in paragraph (e) of Section I and paragraph (b) of Section II);

(3) The addition of a Secondary Service (as defined in Section V (i)) provided by MassMutual to the Fund for which a fee is charged, or an increase in the rate of any fee paid by the Funds to MassMutual for any Secondary Service that resulted either from an increase in the rate of such fee or from a decrease in the number or kind of services performed by MassMutual for such fee over an existing rate for such Secondary Service that had been authorized by the Independent Fiduciary of a Client Plan. In this regard, such approvals were presumed notwithstanding that MassMutual did not receive any response from a Client Plan to MassMutual's two written requests (one by certified mail) for approval of a change in the rates of fees provided that the first such request occurred at least 90 days before the in-kind transfer and the second such request occurred within 45 days thereafter. Such approval may have been limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by a Client Plan and did not relate to any other aspects of such investment.

(e) The Fund Adviser did not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(f) The Plan did not pay any plan-level investment management, investment advisory or similar fee with respect to the Client Plan assets invested in such shares for the entire period of such investment. This condition did not preclude the payment of investment advisory fees by an investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940.

(g) On an annual basis, MassMutual provided the Independent Fiduciary of each Client Plan holding shares of the Funds with—

(1) A copy of an updated prospectus of such Fund; and

(2) Upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other

written statement) containing a description of all fees paid by the Fund to MassMutual or its affiliates.

(3) Oral or written responses to inquiries of the Independent Fiduciary as they arose.

10. MassMutual also requests prospective relief for the receipt of fees by MassMutual from the Funds, for acting as an investment adviser for such Funds, as well as for providing other services to the Funds which are ''Secondary Services,'' as defined in Section VI(i), in connection with the investment in shares of the Funds by the Client Plans for which MassMutual serves as a fiduciary. MassMutual states that such receipt of fees meets the criteria of section 408(a) of the Act since, among other things:

(a) For each Client Plan using the nondiscretionary fee structure described in paragraph (d)(2) of Section IV with respect to investments in a particular Fund, the Independent Fiduciary of the Client Plan will receive full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by MassMutual to the Funds for investment advisory services.

(b) All authorizations made by an Independent Fiduciary regarding investments in a Fund and the fees paid to MassMutual will be subject to an annual reauthorization, wherein any such prior authorization referred to in Section III(d) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by MassMutual of written notice of termination. The Independent Fiduciary will be supplied with a Termination Form, at the times specified in paragraph (c) of Section IV, with instructions on the use of the form, including the following information: (1) The authorization is terminable at will by any of the Client Plans, without penalty to such Client Plans, upon receipt by MassMutual of written notice from the Independent Fiduciary; and (2) Failure by the Independent Fiduciary to return the Termination Form on behalf of a Client Plan will be deemed to be an approval of the additional Secondary Service for which fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to the requirements of Section IV, and will result in the continuation of the authorizations of MassMutual to engage in the transactions on behalf of such Client Plan.

(c) The Independent Fiduciary will be supplied with a Termination Form annually; provided that the Termination Form need not be supplied to the Independent Fiduciary pursuant to this paragraph sooner than six months after such Termination Form is supplied pursuant to paragraph (e) of Section IV, except to the extent required to disclose an additional service or an increase in fees.

(d) Each Client Plan will satisfy either (but not both) of the following:

(1) For a Client Plan for which MassMutual serves as a non-discretionary trustee, the Plan will not pay any Plan-level investment management fees, investment advisory fees, or similar fees to MassMutual with respect to Client Plan assets invested in the Funds. This condition will not preclude the payment of investment advisory fees, or similar fees, by a Fund to MassMutual under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act, nor will it preclude the payment of fees for Secondary Services to MassMutual pursuant to a duly adopted agreement between MassMutual and the Funds.

(2) For a Client Plan for which MassMutual serves as a discretionary fiduciary (*i.e.,* a trustee or investment manager), such Client Plan will pay MassMutual an investment advisory fee based on total Client Plan assets from which a credit had been subtracted representing such Client Plan's pro rata share of investment advisory fees paid by the Funds. This condition will not preclude the payment of fees for Secondary Services to MassMutual pursuant to a duly adopted agreement between MassMutual and the Funds.

(e)(1) For each Client Plan using the fee structure described in paragraph (d)(1) of Section IV with respect to investments in a particular Fund, an increase in the rate of fees paid by the Fund to MassMutual regarding any investment management services, investment advisory services, or similar services that MassMutual provides to the Fund over an existing rate for such services that had been authorized by an Independent Fiduciary in accordance with paragraph (d) of Section III; or

(2) For any Client Plan under this exemption, an addition of a Secondary Service (as defined in Section V (i)) provided by MassMutual to the Fund for which a fee is charged, or an increase in the rate of any fee paid by the Funds to MassMutual for any Secondary Service that results either from an increase in the rate of such fee or from a decrease in the number or kind of services performed by MassMutual for such fee over an existing rate for such Secondary Service that had been authorized by the Independent Fiduciary of a Client Plan in accordance with paragraph (d) of Section III, MassMutual will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Independent Fiduciary of the Client Plan. Such notice shall be accompanied by a Termination Form with instructions as described in Section IV.

Notice to Interested Persons: The applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore 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 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

State Farm Mutual Automobile Insurance Company and State Farm VP Management Corp.

[Exemption Application No. D–10961]

Proposed Exemption

The Department of Labor 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).[21]

Section I: Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) 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) through (D) of the Code shall not apply to the purchase or redemption of an institutional class of shares (the Institutional Shares) of State Farm mutual funds (the Fund(s)), open-end management investment companies registered under the Investment Company Act of 1940 (the 1940 Act), by pension plans (the Plan(s)), as defined in Section III (h), below, which are established by:

[21] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

(a) Independent contractor agents (the Agent(s)) of State Farm Mutual Automobile Insurance Company (State Farm) or its affiliates, who are also registered representatives of State Farm VP Management Corp. (SFVPMC), for themselves and their employees, and

(b) The family members of such Agents (the Family Member(s))(as defined in section 3(15) of the Act), provided that the conditions set forth in Section II, below are satisfied.

Section II: Conditions

(a) Neither State Farm nor its affiliates has discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) Plans do not pay any plan-level investment management, investment advisory, or similar fees to State Farm or its affiliates in connection with the investment of the assets of such Plans in any of the Funds.

(c) Plans do not pay any redemption fees in connection with the sale of shares of any of the Funds by such Plans.

(d) Plans do not pay any sales commissions in connection with the acquisition or sale of shares of any of the Funds, and the Agents do not receive any sales commissions or any other compensation or benefit, direct or indirect, in connection with the transactions that are the subject of this exemption. In this regard, neither State Farm nor any of its affiliates provides production credit, bonus, trip, or other sales incentive to such Agents based on such transactions.

(e) All dealings between the Plans and the Funds and State Farm and its affiliates are on a basis no less favorable to such Plans than such dealings are with other shareholders of the Funds.

(f) The price paid or received by a Plan for shares in a Fund is the net asset value per share, as defined, in Section III (d), below, at the time of the transaction and is the same price that would have been paid or received for such shares by any other investor in such Fund at that time.

(g) For each Plan, the combined total of all fees received by State Farm and its affiliates for the provision of services to such Plan, and in connection with the provision of services to any of the Funds in which such Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(h) Neither State Farm nor its affiliates receives any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the proposed transactions.

(i) The Plans are not employee benefit plans sponsored or maintained by State Farm or its affiliates.

(j)(1) Each Agent, or a Family Member of such Agent (as defined in section 3(15) of the Act) in the case of a Plan sponsored by such Family Member, or each participant (the Participant(s)) in the case of a Plan which provides for participant investment direction, receives in advance of any initial investment in a Fund by such Plan (or Participant's account, in the case of a participant directed individual account plan) a full and detailed written disclosure of information concerning each Fund in which such Plan or Participant's account, as the case may be, is considering investing, including but not limited to:

(A) A current prospectus for such Fund;

(B) A statement describing the fees for investment advisory, investment management, or similar services, a statement describing any fees for secondary services (Secondary Services), as defined below in Section III (f), (including but not limited to fees for acting as custodian, transfer agent, or for providing administrative, brokerage, or other services) payable to State Farm or its affiliates, and all other fees to be charged to or paid by such Plan, Participant's account, or such Fund to State Farm or its affiliates;

(C) A statement regarding appropriate investments for retirement plans and explaining why such Fund would be an appropriate investment for such Plan or Participant's account, as the case may be; and

(D) Upon the request of an Agent, a Family Member, or a Participant in a participant directed individual account plan, as the case may be, a copy of this proposed exemption and/or a copy of the final exemption, if granted, as such documents appear when published in the **Federal Register**.

(2) Each Participant, in the case of a Plan that does not provide for participant investment direction, receives from the fiduciary responsible for directing the investment of plan asset in advance of any initial investment in a Fund by such Plan:

(A) A statement that the Plan is investing in the Funds;

(B) The name of each Fund in which such Plan is investing; and

(C) A current prospectus for each such Fund.

(k) Any investment of the assets of a Plan (or a Participant's account in the case of a participant directed individual account plan) in each particular Fund is implemented only at the express direction of an Agent, Family Member, or Participant in a participant directed individual account plan, as appropriate, after such Agent, Family Member, or Participant receives the information described in paragraph (j) of Section II, above.[22]

(l) Pursuant to paragraph (k) of Section II, above, the investment of any assets of a Plan (or Participant's account, in the case of a participant directed individual account plan) in a Fund shall be terminable at will by an Agent, Family Member, or Participant, as appropriate, without penalty to such Plan (or Participant's account, in the case of an individually directed account plan), upon receipt by State Farm or its affiliates of a written notice of termination. A form (the Termination Form) expressly providing an election to terminate the investment in a Fund by a Plan (or Participant's account, in the case of an individually directed account plan) with instructions on the use of the form must be supplied to Agents, Family Members, or Participants, as the case may be, no less than annually; provided that the Termination Form need not be supplied to Agents, Family Members, or Participants, pursuant to this paragraph, sooner than six (6) months after such Termination Form is supplied pursuant to paragraph (m) of this Section II, below, except to the extent required by such paragraph in order to disclose an additional service or a fee increase. The instructions for the Termination Form must include a statement that the investment by a Plan in the Fund is terminable at will by a Plan (or Participant's account in the case of a participant directed individual account plan) without penalty to such Plan (or Participant's account), upon receipt by State Farm or its affiliates of written notice from the appropriate Agent, Family Member, or Participant.

[22] The Department notes that the general standards of fiduciary conduct under the Act would apply to the investment transactions permitted by this proposed exemption, and that satisfaction of the conditions of this proposed exemption should not be viewed as an endorsement of any particular investment by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the Department notes that the selection and the retention of any of the Funds as an investment or an investment option under a Plan is a fiduciary act. In this regard, the Department expects the fiduciary of a Plan to determine, if such selection and retention of any of the Funds by a Plan is appropriate after taking into consideration the investment performance of such Funds and the fees paid by such Funds (including advisory fees and administrative fees paid to State Farm and other persons).

(m)(1) In the event of an increase in fees paid by a Fund for any service, or

(2) In the event of an addition of any Secondary Service for which a fee is charged, or

(3) In the event of an increase in the rate of any fee that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed for such fee, State Farm or its affiliates will, at least 30 days in advance of the implementation of such fee increase or a fee for an additional service or increase in the rate of a fee, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and that explains the nature and amount of the additional service for which a fee is charged or the increase in fees or the increase in the rate of any fee) to the appropriate Agent, Family Member, or Participant in a participant directed individual account plan. Such notice shall be accompanied by a Termination Form with instructions, as described above in paragraph (l) of this Section II, which will permit a Plan (or Participant's account, in the case of a participant directed individual account plan) to redeem shares of such Fund without penalty.

(n)(1) On an annual basis, each Agent, Family Member, or Participant in a participant directed individual account plan receives from State Farm the following information for each Fund in which a Plan (or Participant's account, in the case of a participant directed individual account plan) invests:

(a) A copy of the current prospectus,

(b) Upon the request of the appropriate Agent, Family Member, or Participant in a participant directed individual account plan, a copy of the Statement of Additional Information that contains a description of all fees paid by such Fund to State Farm or its affiliates;

(c) A copy of the annual report prepared by State Farm or its affiliates that includes information about the portfolios in such Fund, as well as audit findings of an independent auditor, within 60 days of the preparation of such report; and

(d) Oral or written responses to inquiries of an Agent, Family Member, or Participant, as such responses arise.

(2) On an annual basis, each Participant in the case of a Plan that does not provide for participant investment direction receives from the fiduciary responsible for directing the investment of plan assets copies of the annual report for each of the Funds in which the assets of such Plan are invested.

(o) Any Plan subject to this proposed exemption that is a prototype retirement plan sponsored by State Farm or its affiliates may not require the investment of a minimum percentage of the total assets of such Plan in State Farm investment products.

(p) State Farm or its affiliates maintain for a period of six (6) years the records necessary to enable the persons described in paragraph (q) of this Section II, below, to determine whether the 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 State Farm or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than State Farm and its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by paragraph (q) of this Section II, below.

(q)(1) Except as provided in paragraph (q)(2) of this Section II, below, and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (p) of this Section II, above, are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any Agent, Family Member, Participant in the case of a participant directed individual account plan, or any other fiduciary of a Plan who has authority to acquire or dispose of shares of any of the Funds owned by such Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (q)(1)(ii) and (iii) of this Section II, above, shall be authorized to examine trade secrets of State Farm or its affiliates, or commercial or financial information that is privileged or confidential.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term, ''affiliate'' or ''affiliates,'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative (as defined in paragraph (e) of this Section III, below), or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, ''Fund or Funds,'' shall include any diversified open-end investment company or companies registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

(d) The term, ''net asset value,'' means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities (determined by a method as set forth in a Fund's prospectus and Statement of Additional Information) and other assets belonging to such Fund or portfolio of such Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(e) The term, ''relative,'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(f) The term, ''Secondary Service,'' means a service other than an investment management, investment advisory, or similar service, which is provided by State Farm or its affiliates to a Fund, including custodial, accounting, brokerage, administrative, or any other service.

(g) ''Termination Form,'' means the form supplied to an Agent, Family Member, or Participant in a participant directed individual account plan, as appropriate, that expressly provides an election to terminate on behalf of a Plan (or the Participant's account in the case of a participant directed individual account plan) the investment of plan assets in a Fund. Such Termination Form may be used at will by an Agent, Family Member, or Participant in a participant directed individual account plan to terminate the investment by a Plan in a Fund without penalty to the Plan (or the Participant's account, in the

case of a participant directed individual account plan) and to notify State Farm and its affiliates in writing to effect a termination by selling the shares of a Fund held by the Plan (or Participant's account) requesting such termination within one business day following receipt by State Farm or its affiliates of the form; provided that if, due to circumstances beyond the control of State Farm or its affiliates, the sale cannot be executed within one business day, State Farm or its affiliates shall have one additional business day to complete such sale.

(h) The term, ''Plan'' or ''Plans,'' means any pension plan subject to the Act and/or the Code, including but not limited to plans that provide for participant investment direction, traditional individual retirement accounts (IRAs), SEP-IRAs, and Keogh plans.

Effective Date: This proposed exemption, if granted, is effective, as of May 1, 2001.

Summary of Facts and Representations

1. State Farm is a mutual insurance company organized under the laws of the State of Illinois. It is a property/casualty insurance company and is the parent company of a number of life and property/casualty insurance companies and financial services companies.

2. SFVPMC, organized as a Delaware corporation in 1996, is a wholly-owned subsidiary of State Farm. SFVPMC is registered as a broker-dealer with the Securities and Exchange Commission and is a member of the National Association of Securities Dealers, Inc. SFVPMC serves as the distributor of variable life insurance policies and variable annuity contracts issued by State Farm companies. State Farm Agents act as registered representatives of SFVPMC in connection with the sale of such insurance policies and variable annuity contracts.

3. State Farm Investment Management Corp. (SFIMC), organized as a Delaware corporation in 1966, is a wholly-owned subsidiary of State Farm. SFIMC is registered as an investment adviser under the 1940 Act. SFIMC performs investment advisory, transfer agent, and underwriting services for State Farm.

4. Although there are a modest number of State Farm Agents who are employees, State Farm and its subsidiaries sell their products through an exclusive agency force—a majority of which are independent contractors. State Farm selects and trains the Agents and provides them with exclusive agency contracts. State Farm works closely with the Agents in a number of areas, but it does not actively supervise them. This proposed exemption concerns only those State Farm Agents who are independent contractors, and all references to Agents should be read to apply to Agents of State Farm and its subsidiaries that are independent contractors.

5. Many Agents hire employees to assist them in their sales and related activities. It is common for Agents to sponsor for themselves and for their employees retirement plans that are subject to the Act and/or the Code. In addition, Family Members of the Agents (as defined in section 4975(e)(6) of the Code) may also establish for themselves plans that are subject to the Act and/or the Code. These plans most frequently include 401(a) plans, IRAs, and SEP-IRAs. Many of these plans are funded with annuity and insurance contracts issued by life insurance subsidiaries of State Farm.

6. During the fourth quarter of 2000, State Farm established the Funds, listed below, and placed $410,000,000 into such Funds as seed money. The seed money was allocated to the Funds as follows:

(1) State Farm Equity Fund ($20 million); (2) State Farm Small Cap Equity Fund ($50 million); (3) State Farm International Equity Fund ($50 million); (4) State Farm S&P 500 Index Fund ($50 million); (5) State Farm Small Cap Index Fund ($50 million); (6) State Farm International Index Fund ($50 million); (7) State Farm Equity and Bond Fund ($50 million); (8) State Farm Bond Fund ($30 million); (9) State Farm Tax Advantaged Bond Fund ($50 million); and (10) State Farm Money Market Fund ($10 million).

It is represented that the seed money was entirely derived from State Farm assets and not from the assets of any employee benefit plan. State Farm has informed the Department that it has no intention at this time of withdrawing such seed money from the Funds. It is further represented that the viability of the Funds is not dependent in any manner upon the investment of assets of any employee benefit plan.

For each Fund, there are several classes of shares. As of September 2, 2001, the percentage of State Farm's ownership in each portfolio of the Funds and each class of retail shares within each portfolio was as follows: (1) State Farm Equity Fund A (29.41%) and State Farm Equity Fund B (33.86%); (2) State Farm Small Cap Equity Fund A (93.45%) and State Farm Small Cap Equity Fund B (97.57%); (3) State Farm International Equity Fund A (95.40%) and State Farm International Equity Fund B (98.59%); (4) State Farm S&P 500 Index Fund A (76.06%) and State Farm S&P 500 Index Fund B (89.74%); (5) State Farm Small Cap Index Fund A (94.07%) and State Farm Small Cap Index Fund B (98.26%); (6) State Farm International Index Fund A (96.76%) and State Farm International Index Fund B (92.91%); (7) State Farm Equity and Bond Fund A (85.00%) and State Farm Equity and Bond Fund B (94.43%); (8) State Farm Bond Fund A (55.72%) and State Farm Bond Fund B (60.45%); (9) State Farm Tax Advantaged Bond Fund A (94.41%) and State Farm Tax Advantaged Bond Fund B (99.53%); and (10) State Farm Money Market Fund A (61.67%) and State Farm Money Market Fund B (99.98%).

7. In early 2001, State Farm began offering shares of the ten (10) separate Funds, listed in paragraph 6 above, for sale through the State Farm Mutual Fund Trust (the Trust). The Trust is an open-end management investment company organized as a business trust under the laws of the State of Delaware. Each of the Funds has its own investment objective, investment policies, restrictions, and risks that are generally reflected in the name of each Fund.

8. SFIMC is the investment adviser to each of these Funds. It is represented that the State Farm S&P 500 Index Fund, the State Farm Small Cap Index Fund, and the State Farm International Index Fund (the Equity Index Funds) seek to achieve their respective investment objectives by investing all of their assets in the S&P 500 Index Master Portfolio, the International Index Master Portfolio, and the Russell 2000 Index Master Portfolio (the Master Portfolios) for which Barclays Global Fund Advisors (Barclays), a party unrelated to State Farm, serves as the investment adviser.

9. State Farm, through the Trust, issues a separate series of shares of beneficial interest for each Fund, representing fractional undivided interests in such Fund. In this regard, for each Fund there are three (3) classes of shares, Class A shares, Class B shares, and Institutional Shares. These classes of shares are distinguished by varying sales charges and shareholder servicing fees. Class A shares have a front-end sales load of up to 3.00 percent (3%) and charge a 12b–1 distribution fee of up to .25 percent (.25%). Class B shares have no front-end load, but provide for a contingent deferred sales charge on the back end of up to 3.00 percent (3%). In addition, Class B shares charge a 12b–1 distribution fee of up to .65 percent (.65%). Finally, Institutional Shares have no sales loads or 12b–1 distribution fees.

SFVPMC is the broker-dealer, principal underwriter, and distributor for the Funds. Class A and Class B

shares of the Funds are sold through State Farm Agents who become licensed as registered representatives of SFVPMC. As of October 2000, there were approximately 9,200 State Farm Agents who were registered representatives of SFVPMC. The Institutional Shares are designed primarily for investment by employee benefit plans sponsored by State Farm and its affiliates and are not generally made available for sale to the public.

10. State Farm and its subsidiary, SFVPMC, (collectively, the Applicants) have requested a prohibited transaction exemption which would permit: (a) The independent contractor Agents of State Farm who are also registered representatives of SFVPMC; and (b) the Family Members of such Agents to direct that assets of any Plan sponsored by such Agents or Family Members be invested in the Institutional Shares of one or more of the recently established Funds.

Absent the requested relief, the Applicants are concerned that a violation of section 406(b)(2) of the Act would be deemed to occur, if assets of any of the Plans are invested in any of the Funds, because an Agent would be representing both SFVPMC and a Plan in any purchase or redemption of shares of such Funds. The Applicants are also seeking relief from any potential violations of section 406(a) of the Act and section 4975(c)(1)(A)–(D) of the Code that could be deemed to occur in the proposed transactions.

11. There are two class exemptions covering transactions similar to those at issue in this proposed exemption. The first class exemption, Prohibited Transaction Class Exemption 77–3 (PTCE 77–3) (42 FR 18734, April 8, 1977), permits the acquisition or sale of shares of an open-end investment company registered under the 1940 Act by an employee benefit plan covering only employees of such investment company, its investment adviser, principal underwriter, or ''affiliated persons'' of such entities (as defined in section 2(a)(3) of the 1940 Act). In this regard, the Applicants have determined that the proposed transactions are not within the scope of PTCE 77–3, because the Agents (and their Family Members) are not affiliated persons of any of the Funds, investment advisers to any of the Funds, or principle underwriters of such Funds within the meaning of section 2(a)(3) of the 1940 Act.

The other class exemption, Prohibited Transaction Class Exemption 77–4 (PTCE 77–4) (42 FR 18732, Apr. 8, 1977), permits the purchase or sale of shares of an open-end investment company where the investment adviser to the company is also a fiduciary of the plan. In this regard, the Applicants have determined that the proposed transactions are not within the scope of PTCE 77–4, because the investment adviser of the Funds is not a fiduciary of the Plans. However, because the proposed transactions appear to parallel the transactions contemplated by PTCE 77–3 and PTCE 77–4, the Applicants have requested administrative relief comparable to that afforded by PTCE 77–3 and PTCE 77–4.

12. As an investment adviser, SFIMC continuously furnishes an investment program for the Funds (other than the Equity Index Funds), is responsible for managing the investments of the Funds, and has responsibility for making decisions governing whether to buy, sell, or hold any particular security. In carrying out its obligations to manage the investment and reinvestment of the assets of the Funds, SFIMC performs research and obtains and evaluates pertinent economic, statistical, and financial data relevant to the investment policies of such Funds. As investment adviser to the Equity Index Funds, SFIMC monitors the performance of the Master Portfolio in which each of the Equity Index Funds invests.

Pursuant to an investment advisory agreement, adopted in accordance with section 15 of the 1940 Act, the Trust pays SFIMC compensation in the form of an investment advisory and management services fee. The amount of the fee for each Fund is described in the prospectus for such Fund. In this regard, such fee accrues daily; is paid quarterly to SFIMC; and is based on average daily net assets. It is represented that SFIMC reimburses each Fund, if and to the extent, that the total annual operating expenses of each Fund exceed a specified percentage of the average net assets of such Fund.

With respect to one of the Funds, the State Farm Equity and Bond Fund, SFIMC has agreed not to receive an investment advisory and management services fee for services rendered to such Fund. However, SFIMC will receive fees from managing the underlying Funds in which the State Farm Equity and Bond Fund invests. In this regard, SFIMC attempts to maintain approximately 60 percent (60%) of the net assets of the State Farm Equity and Bond Fund in shares of the State Farm Equity Fund and approximately 40 percent (40%) of the net assets of the State Farm Equity and Bond Fund in shares of the State Farm Bond Fund.

13. The Trust is responsible for payment of all expenses it may incur in its operation and for all of its general administrative expenses, except those expressly assumed by SFIMC. These include (by way of description and not of limitation), any share redemption expenses, expenses of portfolio transactions, shareholder servicing costs, pricing costs (including the daily calculation of net asset value), interest on amounts borrowed by the Trust, charges of the custodian and transfer agent, cost of auditing services, non-interested Trustees' fees, legal expenses, all taxes and fees, investment advisory and management service fees, certain insurance premiums, cost of maintenance of corporate existence, investor services (including allocable personnel and telephone expenses), costs of printing and mailing updated Trust prospectuses to shareholders, costs of preparing, printing, and mailing proxy statements and shareholder reports to shareholders, the cost of paying dividends, capital gains distribution, costs of Trustee and shareholder meetings, dues to the Investment Company Institute to which the Funds are members, and any extraordinary expenses, including litigation costs in legal actions involving the Trust, or costs related to indemnification of Trustees, officers and employees of the Trust. The Board of Trustees of the Trust determines the manner in which expenses are allocated among the Funds of the Trust.

14. Pursuant to a sub-advisory agreement, adopted in accordance with section 15 of the 1940 Act, SFIMC has engaged Capital Guardian Trust Company (CGTC) as the investment sub-adviser to provide day-to-day portfolio management for the State Farm Small Cap Equity Fund and the State Farm International Equity Fund. CGTC manages the investments of the State Farm Small Cap Equity Fund and the State Farm International Equity Fund, determining which securities or other investments to buy and sell for each, selecting the brokers and dealers to effect the transactions, and negotiating commissions.

For its services, SFIMC pays CGTC an investment sub-advisory fee equal to a percentage of the average daily net assets of each of the State Farm Small Cap Equity Fund and the State Farm International Equity Fund at the rates, as described in the prospectus of each Fund.

15. As stated above, Barclays is the investment adviser to the Master Portfolios. Pursuant to an investment advisory contract with the Master Portfolios, adopted in accordance with section 15 of the 1940 Act, Barclays provides investment guidance and policy direction in connection with the management of the assets of the Master

Portfolios. Barclays is entitled to receive monthly fees as compensation for its advisory and administrative services to each Master Portfolio, as described in the prospectus. This advisory fee is an expense of the Master Portfolios borne proportionately by its interest holders, such as the Equity Index Funds.

16. The Applicants represent that the requested exemption is administratively feasible in that it will not require monitoring by the Department. In this regard, State Farm or its affiliates will maintain for a period of six (6) years the records necessary to determine whether the conditions of this exemption have been met.

17. The Applicants represent that the investment in the Funds is in the best interest of the Plans and their participants and beneficiaries. In this regard, the Funds represent a wide range of investment alternatives for plan assets. The price to be paid or received by a Plan for Institutional Shares in a Fund will be the net asset value per share at the time of the transaction and will be the same price that would have been paid or received for such shares by any other investor in such Fund at that time.

The exemption will permit the Plans to acquire Institutional Shares that would not ordinarily be available to Plans of this size with minimal fees and expenses. With respect to fees, the Plans will pay no plan-level investment advisory, investment management, or similar fee to State Farm or its affiliates in connection with the investment of the assets of such Plans in the Funds, nor will the Plans pay sales commissions or redemption fees in connection with the purchase or sale of Institutional Shares of the Funds. Furthermore, neither State Farm nor its affiliates will receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the proposed transactions. The costs to each such Plan of any investment in the Funds should therefore be at least comparable to the costs of investing in shares of other similar mutual funds.

18. The proposed transactions parallel the transactions contemplated by PTCE 77–3 and PTCE 77–4. In this regard, as a result of the exclusive agency relationship and other factors, the Agents and their employees identify with State Farm in a way that is similar to the identification that employees of an insurance company, an investment company, or other financial institution would have with the company that employs them. Furthermore, the proposed exemption contains conditions similar to those imposed in PTCE 77–3 and PTCE 77–4 that are designed to prevent abuse.

19. The proposed exemption contains additional safeguards to protect the interests of the Plans. In this regard, the investment of assets of a Plan (or a Participant's account in the case of a participant directed individual account plan) in each particular Fund will be implemented only at the express direction of an Agent, Family Member, or Participant in a plan that provides participant investment direction. In no event, will State Farm nor its affiliates have discretionary authority or control with respect to the investment of the plan assets involved in the proposed transactions, nor will State Farm or its affiliates render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

Prior to the initial investment by any of the Plans in a Fund, annually after the initial investment, and in advance of any increase in fees, any increase in the rate of fees, or the addition of any Secondary Service for which a fee is charged, Agents, Family Members, or Participants, as appropriate, will receive from State Farm or its affiliates certain written disclosure of information concerning such Fund. Investment in the Funds will be terminable at will by a Plan without penalty, upon receipt of written notification by State Farm or its affiliates.

The proposed exemption contains a condition that ensures that fiduciaries of the Plans are not improperly induced to purchase Institutional Shares of the Fund for Plans. In this regard, Agents will not receive sales commission or any other compensation or benefit, directly or indirectly, in connection with the purchase or sale of Institutional Shares of the Funds. Furthermore, it is represented that the Agents will not be pressured in any manner to cause Plans to purchase any shares in the Funds.

The exemption, if granted, would operate to permit the Plans to purchase Institutional Shares in the Funds but would not require that the Plans be funded with the Funds. Furthermore, State Farm has confirmed to the Department that formal action will be taken through an amendment to the prototype documents, effective May 31, 2001, to delete any provision permitting the insurer to limit investment options under the prototypes. Accordingly, the proposed exemption contains a condition that any Plan that adopts a prototype retirement plan sponsored by State Farm or its affiliates must not be required under the provisions of such prototype to invest a minimum percentage of the total investments under such Plan in State Farm products.

20. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) the acquisition and sale of Institutional Shares of the Funds to the Plans parallel the transactions contemplated by PTCE 77–3 and PTCE 77–4, and the proposed exemption contains safeguards similar to the conditions in such class exemptions; (b) the Plans pay no sales commissions or redemption fees with respect to investments by such Plans in any of the Funds; (c) Agents do not receive sales commission or any other compensation or benefit, directly or indirectly, in connection with the proposed transactions; (d) the Plans do not pay any plan-level investment advisory or similar fee in connection with the investment of the assets of such Plans in any of the Funds; (e) all dealings between the Plans, any of the Funds, and State Farm and its affiliates are on a basis no less favorable to such Plans than such dealings are with other shareholders of such Funds; (f) the price paid or received by a Plan for Institutional Shares in a Fund is the net asset value per share at the time of the transaction and is the same price that would have been paid or received for such shares by any other investor in such Fund at that time; (g) for each Plan, the combined total of all fees received by State Farm and its affiliates for the provision of services to such Plan, and in connection with the provision of services to any of the Funds in which such Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act; (h) neither State Farm nor its affiliates receives any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the proposed transactions; (i) prior to the initial investment by any of the Plans in a Fund, annually after the initial investment, and in advance of any increase in fees, any increase in the rate of fees, or the addition of any Secondary Service for which a fee is charged, Agents, Family Members, or Participants, as appropriate, receive certain written disclosure of information concerning such Fund; (j) any investment of assets of a Plan (or a Participant's account, in the case of a participant directed individual account plan) in a Fund is implemented only at the express direction of an Agent, Family Member, or Participant in a participant directed individual account plan; (k) investment by a Plan (or by a Participant's account, in the case of a individually directed account plan) in a

Fund is terminable at will by such Plan (or Participant's account), without penalty, upon receipt by State Farm or its affiliates of written notice of termination; (l) the Plans are not employee benefit plans sponsored or maintained by State Farm or its affiliates; and (m) any Plan subject to this proposed exemption which adopts a prototype retirement plan sponsored by State Farm or its affiliates must not be required under the provisions of such prototype to invest a minimum percentage of the total investments under such Plan in State Farm products.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Rollover Individual Retirement Account for Brenda A. Moran (the IRA) Located in Hobbs, New Mexico

[Application No. D–11015]

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 common stock (the Stock) of Bravo Energy Inc. (Bravo) by the IRA [23] to Bravo, 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 greater of $14.24 per share of Stock or the fair market value of the Stock at the time of the Sale; 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 under section 408(a) of the Code. The Applicant is the sole participant of the IRA. As of April 30, 2001, the IRA held assets valued at approximately $2,242,747.41. Moran is the only person who has investment discretion over the assets in the IRA.

2. The IRA acquired 10,199 shares of Stock as a result of a rollover from the employee stock ownership plan of Moran Co., a New Mexico corporation. Moran Co. merged into Bravo effective as of July 31, 1991.

3. The Applicant requests an exemption for the Sale. The Applicant represent that the proposed transaction would be feasible because it would be a one-time transaction for cash. Furthermore, the Applicant states that the transaction would be in the best interest of the IRA because the Sale would enable the IRA to invest the proceeds from the Sale in assets with a higher rate of return. Finally, the Applicant represents that the transaction will be protective of the rights of the IRA's participant and beneficiaries because the IRA will receive the greater of $14.24 per share of Stock or the fair market value of the Stock, as determined by a qualified, independent appraiser on the date of the Sale, and will incur no commissions, costs, or other expenses as a result of the Sale.

4. James W. Francis, a CPA accredited in business valuation with Johnson, Miller Co., located in Hobbs, New Mexico, appraised the Stock on October 11, 2001, based on Internal Revenue Service pronouncements. The value was obtained by determining the price that a hypothetical willing buyer would pay a willing seller for the shares of the Stock owned by the IRA. Based upon the factors related to the valuation and approaches, methods and procedures of valuation considered and other information accumulated during the investigation and analysis, including a December 31, 1999 valuation prepared by a qualified, independent, appraiser previously hired by the Applicant, the December 31, 2000 balance sheet prepared by Bravo, and inspecting the Stock and analyzing all relevant data, Mr. Francis determined that a fee simple interest in the Stock had a fair market value of approximately $14.24 per a share as of October 11, 2001.

5. 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 transaction with an unrelated third party;

(b) The Sale would be a one-time cash transaction allowing the IRA to divest itself of the Stock and reinvest the proceeds of the Sale in assets that will yield a higher rate of return;

(c) The IRA would receive an amount equal to the greater of $14.24 per share of the Stock, which represents the appraised fair market value of the Stock, as appraised by Mr. Francis in October 11, 2001, or the fair market value of the Stock at the time of the Sale; and

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

Notice to Interested Parties: Because Moran 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: Khalif Ford of the Department, telephone (202) 219–8883 (this is not a toll-free number).

Individual Retirement Account of Howard E. Adkins (the IRA) Located in Boise, Idaho

[Application No. D–11025]

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, 32847, 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 sale by the IRA of an interest (the Interest) in certain real property (the Property) to Moccasin, LLC (the LLC), a disqualified person with respect to the IRA,[24] provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the IRA pays no commissions nor other expenses relating to the sale; and (3) the sales price received by the IRA equals the Interest's fair market value, as of the date of the sale, as established by a qualified, independent appraiser.

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 Howard E. Adkins, M.D., who is the sole participant. Dr. Adkins' wife, Ione M. Adkins, is the beneficiary of the IRA. As of September 18, 2001,

[23] Because Brenda A. Moran (the Applicant) is the only participant in the IRA, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

[24] Pursuant to 29 CFR 2510.3–2(d), the IRA is not an employee benefit plan within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the code.

the IRA had total assets of approximately $651,021.00, which consisted primarily of the Interest (as valued by an independent appraisal, discussed below). The trustee of the IRA is First Security Bank of Idaho, N.A., located in Boise, Idaho.

2. Dr. Adkins and his wife are the sole managing members of the LLC, an Idaho limited liability company in which each owns 7,500 units. The LLC has no other members. The LLC, the proposed purchaser of the Interest, was formed to hold title to two real estate investment properties, which are ranches located near Salmon, Idaho. The LLC is contemplating a sale of one of the two ranches, with the proceeds to be used by the LLC to purchase the Interest from the IRA 7 in a tax-free exchange (pursuant to section 1031 of the Code).

3. The Property consists of four units of farmland in Adams County, Washington—the West Tract (Units 45 & 46) and the East Tract (Units 56 & 57). The Property was originally acquired as an investment by Dr. Adkins' individual account in the Adkins Fulwyler Pension Trust (the Trust). The Trust purchased two units of the Property in 1983 from Charles H. and Tonia L. Howarth, who are unrelated parties, for approximately $222,250. The Trust purchased two additional units in 1985 from the Prudential Insurance Company, also unrelated, for approximately $225,000. The Property and other assets were distributed from the Trust and rolled over into the IRA in December, 1995.

On July 20, 2000, Dr. Adkins turned 70½, the maximum age for a minimum required distribution (MRD) from his IRA. The applicant represents that there was insufficient cash available to make the MRD to Dr. Adkins from his IRA for the year 2000.[25] Consequently, Dr. Adkins was forced to receive some cash and a small undivided interest (nine percent) in Units 45 & 46 of the Property.[26] The applicant represents that the Property is not adjacent to any other real property owned by the Adkinses.

The Property is being rented annually to an unrelated third party for approximately $35,000.00 per year. Rental expenses include (i) a custodian charge by Wells Fargo Bank of 1% per month of the value of the Property, (ii) an onsite Property manager that receives 12% of the net rental income, (iii) taxes and water charges of approximately $18,000 per year, and (iv) miscellaneous repair and equipment purchases. The applicant further represents that the Property has not been leased to, nor used by, a disqualified person with respect to the IRA, at any time since being acquired by the IRA.[27]

4. The Property has been appraised by Columbia Appraisal and Real Estate Company, a qualified, independent appraiser located in Pasco, Washington. Robert L. Greeno, a general appraiser certified in the State of Washington, and Wendy C. Greeno, Appraisal Assistant, estimated that the fair market value of the Property was $685,700, as of September 18, 2001. Utilizing the Sales Comparison Approach, the Greenos chose three recent sales of comparable irrigated farms in Adams County, which were within a 15-mile radius of the Property, as the best indicators of the current market value of the Property. Mr. Greeno concluded that the West Tract (Units 45 & 46) consists of 148.2 irrigable acres worth $2,600 per acre for a value of $385,320, while the East Tract (Units 56 & 57) consists of 130.6 irrigable acres worth $2,300 per acre for a value of $300,380—thus, a total value for the Property of $685,700.

Subtracting the nine percent (9%) minority interest in the West Tract of the Property (*i.e.,* valued at $34,679), which is owned individually by Dr. Adkins as a result of the MRD from the IRA, Mr. Greeno concluded that the fair market value of the IRA's Interest was $651,021, as of September 18, 2001.

5. The applicant proposes that the LLC purchase the Interest from the IRA for an amount in cash equal to the fair market value of the Interest ($651,021, as of September 18, 2001), based on an updated, independent appraisal at the time of the transaction. The IRA will pay no commissions nor other expenses relating to the sale.

The applicant represents that the proposed exemption is in the best interests of the IRA because the IRA will be able to obtain a much better price for the Interest from the LLC, compared with offers it has received in past attempts to sell the Interest on the open market, and without incurring any brokerage commissions or other transaction costs. In addition, the sale will allow the IRA an opportunity to divest itself of an illiquid asset. The IRA will then be able to reinvest the sale proceeds in other investments that will increase the diversification of the IRA's assets and facilitate the payment of retirement benefits.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code for the following reasons:

(a) the sale will be a one-time transaction for cash; (b) the IRA will pay no commissions nor other expenses relating to the sale; (c) the sale price received by the IRA will equal the Interest's fair market value, as of the date of the sale, as established by a qualified, independent appraiser; and (d) the sale will allow the IRA an opportunity to divest itself of an illiquid asset, increase the diversification of the IRA's assets by reinvesting the proceeds of the sale in other investments, and facilitate the payment of retirement benefits.

Notice to Interested Persons: Because Dr. Adkins is the sole participant in his IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing with respect to the proposed exemption are due within 30 days of the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 693–8540. (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 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,

[25] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments in a qualified plan may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. See, e.g., Rev. Rul. 73–532, 1973–2 C.B. 128. The Department further notes that section 408(a) of the Code, which describes tax qualification provisions for IRAs, mandates that an IRA trust be created for the exclusive benefit of an individual and his or her beneficiaries. However, the Department expresses no opinion herein as to whether the acquisition and holding of the Property by the IRA violated any provisions of the Code.

[26] The applicant represents that the MRD for the 2000 tax year was calculated as follows. The fair market value of the total assets of the IRA on December 31, 1999 was $637,300. As of that date, the fair market value of Units 45 & 46 of the Property was equal to $346,200, while the fair market value of Units 57& 58 of the Property was equal to $291,100. The MRD for 2000 was $30,936. Thus, nine percent of Units 45 & 46 were deeded to Dr. Adkins (i.e., $346,200 × .09 = $31,158). However, the Department expresses no opinion herein as to whether the amount distributed to Dr. Adkins as the MRD satisfied the applicable provisions of the Code.

[27] The Department notes that any lease or use of the Property by a ''disqualified person,'' as defined in section 4975(e)(2) of the Code, would be a separate prohibited transaction under section 4975(c)(1)(A) or (D) of the Code.

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 6th day of December, 2001.

Ivan Strasfeld,

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

[FR Doc. 01–30755 Filed 12–12–01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–416]

Entergy Operations, Inc.; Grand Gulf Nuclear Station, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, appendix E IV.F.2.b and c for Facility Operating License No. NPF–29, issued to Entergy Operations, Inc., the licensee, for operation of the Grand Gulf Nuclear Station (GGNS), Unit 1, located in Claiborne County, Mississippi. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action is a one time exemption from the requirements of 10 CFR part 50, appendix E, sections IV.F.2.b and c regarding conduct of a full participation exercise of the onsite and offsite emergency plans every 2 years. Under the proposed exemption, the licensee would reschedule the exercise originally scheduled for September 19, 2001, and complete the exercise requirements during the week of March 4, 2002.

The proposed action is in accordance with the licensee's application for an exemption dated September 18, 2001, supplemented by letter dated December 3, 2001.

The Need for the Proposed Action

10 CFR part 50, Appendix E, Items IV.F.2.b and c requires each licensee at each site to conduct an exercise of its onsite and offsite emergency plan every 2 years. Federal agencies (the NRC for the onsite exercise portion and the Federal Emergency Management Agency (FEMA) for the offsite exercise portion) observe these exercises and evaluate the performance of the licensee, State and local authorities having a role under the emergency plan.

The licensee had initially planned to conduct an exercise of its onsite and offsite emergency plan on September 19, 2001, within the required 2-year interval. However, due to circumstances resulting from the national tragedy of September 11, 2001, the licensee was concerned that the performance of an Emergency Plan Exercise, including full participation of offsite authorities, would result in undue stress and risk to the general public and to plant personnel. Based on the concerns created by this extraordinary event, the licensee has decided to postpone the exercise.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity (a scheduler change in conducting an exercise) unrelated to plant operations.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the GGNS.

Agencies and Persons Consulted

On October 5, 2001, the staff consulted with the Mississippi State official, Robert W. Goff of the Mississippi Department of Health, regarding the environmental impact of the proposed action. The State official had no comments. In addition, by telephone conference on September 20, 2001, the FEMA indicated support for a one-time rescheduling of the Emergency Plan exercise from September 19, 2001, to a date during calendar year 2002.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated September 18, and December 3, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville,