

**§ 2570.46**

**29 CFR Ch. XXV (7-1-04 Edition)**

original decision to deny the exemption, it will send a letter to the applicant reaffirming that decision.

(e) If, after reviewing a request for reconsideration, the Department decides, based on the new facts and arguments submitted, to reconsider its denial letter, it will notify the applicant of its intent to reconsider the application in light of the new information presented. The Department will then take whatever steps remained at the time it issued its final denial letter to process the exemption application.

(f) If, at any point during its subsequent processing of the application, the Department decides again that the exemption is unwarranted, it will issue a letter affirming its final denial.

**§ 2570.46 Hearings in opposition to exemptions from restrictions on fiduciary self-dealing.**

(a) Any interested person who may be adversely affected by an exemption which the Department proposes to grant from the restrictions of section 406(b) of ERISA, section 4975(c)(1)(E) or (F) of the Code, or section 8477(c)(2) of FERSA may request a hearing before the Department within the period of time specified in the FEDERAL REGISTER notice of the proposed exemption. Any such request must state:

(1) The name, address, and telephone number of the person making the request;

(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; and

(3) A statement of the issues to be addressed and a general description of the evidence to be presented at the hearing.

(b) The Department will grant a request for a hearing made in accordance with paragraph (a) of this section where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. However, the Department may decline to hold a hearing where:

(1) The request for the hearing does not meet the requirements of paragraph (a);

(2) The only issues identified for exploration at the hearing are matters of law; or

(3) The factual issues identified can be fully explored through the submission of evidence in written form.

(c) An applicant for an exemption must notify interested persons in the event that the Department schedules a hearing on the exemption. Such notification must be given in the form, time, and manner prescribed by the Department. Ordinarily, however, adequate notification can be given by providing to interested persons a copy of the notice of hearing published by the Department in the FEDERAL REGISTER within 10 days of its publication, using any of the methods approved in § 2570.43(c) of this part.

(d) After furnishing the notice required by paragraph (c) of this section, an applicant must submit a statement confirming that notice was given in the form, manner, and time prescribed. This statement must be accompanied by a declaration under penalty of perjury attesting to the truth of the information provided in the statement, which is signed by a person qualified under § 2570.34(b)(5) of these procedures to sign such a declaration.

**§ 2570.47 Other hearings.**

(a) In its discretion, the Department may schedule a hearing on its own motion where it determines that issues relevant to the exemption can be most fully or expeditiously explored at a hearing.

(b) An applicant for an exemption must notify interested persons of any hearing on an exemption scheduled by the Department in the manner described in § 2570.46(c). In addition, the applicant must submit a statement subscribed as true under penalty of perjury like that required in § 2570.46(d).

**§ 2570.48 Decision to grant exemptions.**

(a) If, after considering all the facts and representations submitted by an applicant in support of an exemption application, all the comments received in response to a notice of proposed exemption, and the record of any hearing held in connection with the proposed exemption, the Department determines that the exemption should be granted, it will publish a notice in the FEDERAL REGISTER granting the exemption.