

§ 2570.40

the 30-day period and will be granted only in unusual circumstances and for limited periods of time.

(d) If an applicant is unable to submit all of the additional information he intends to provide in support of his exemption application within the 30-day period specified in paragraph (b) of this section, or within any additional period of time granted to him pursuant to paragraph (c) of this section, the applicant may withdraw the exemption application before expiration of the applicable time period and reinstate it later pursuant to §2570.44 of these procedures.

(e) The Department will issue, without further notice, a final denial letter denying the requested exemption pursuant to §2570.41 of these procedures where—

(1) The Department has not received the additional information that the applicant indicated he would submit within the 30-day period described in paragraph (b) of this section, or within any additional period of time granted pursuant to paragraph (c) of this section;

(2) The applicant did not request a conference pursuant to §2570.38(b) of these procedures; and

(3) The applicant has not withdrawn his application as permitted by paragraph (d) of this section.

§ 2570.40 Conferences.

(a) Any conference between the Department and an applicant pertaining to a requested exemption will be held in Washington, DC, except that a telephone conference will be held at the applicant's request.

(b) An applicant is entitled to only one conference with respect to any exemption application. An applicant will not be entitled to a conference, however, where the Department has held a hearing on the exemption under either §2570.46 or §2570.47 of these procedures.

(c) Insofar as possible, conferences will be scheduled as joint conferences with all applicants present where:

(1) More than one applicant has requested an exemption with respect to the same or similar types of transactions;

(2) The Department is considering the applications together as a request for a class exemption;

(3) The Department contemplates not granting the exemption; and

(4) More than one applicant has requested a conference.

(d) The Department will attempt to schedule a conference under this section for a mutually convenient time during the 45-day period following the later of—

(1) The date the Department receives the applicant's request for a conference, or

(2) The date the Department notifies the applicant, after reviewing additional information submitted pursuant to §2570.39, that it is still not prepared to propose the requested exemption.

If the applicant is unable to attend a conference at any of the times proposed by the Department during this 45-day period or if the applicant fails to appear for a scheduled conference, he will be deemed to have waived his right to a conference unless circumstances beyond his control prevent him from scheduling a conference or attending a scheduled conference within this period.

(e) Within 20 days after the date of any conference held under this section, the applicant may submit to the Department a written record of any additional data, arguments, or precedents discussed at the conference but not previously or adequately presented in writing.

§ 2570.41 Final denial letters.

(a) The Department will issue a final denial letter denying a requested exemption where:

(1) The conditions for issuing a final denial letter specified in §2570.38(b) or §2570.39(e) of these procedures are satisfied;

(2) After issuing a tentative denial letter under §2570.38 of this part and considering the entire record in the case, including all written information submitted pursuant to §2570.39 and §2570.40(e) of these procedures, the Department decides not to propose an exemption or to withdraw an exemption already proposed; or

(3) After proposing an exemption and conducting a hearing on the exemption

under either § 2570.46 or § 2570.47 of this part and after considering the entire record in the case, including the record of the hearing, the Department decides to withdraw the proposed exemption.

(b) [Reserved]

§ 2570.42 Notice of proposed exemption.

If the Department tentatively decides, based on all the information submitted by an applicant, that the exemption should be granted, it will publish a notice of proposed exemption in the FEDERAL REGISTER. The notice will:

(a) Explain the exemption transaction and summarize the information received by the Department in support of the exemption;

(b) Specify any conditions under which the exemption is proposed;

(c) Inform interested persons of their right to submit comments in writing to the Department relating to the proposed exemption and establish a deadline for receipt of such comments;

(d) If the proposed exemption includes relief from the prohibitions of section 406(b) of ERISA, section 4975(c)(1)(E) or (F) of the Code, or section 8477(c)(2) of FERSA, inform interested persons of their right to request a hearing under § 2570.46 of this part and establish a deadline for receipt of requests for such hearings.

§ 2570.43 Notification of interested persons by applicant.

(a) If, as set forth in the exemption application, the notification that an applicant intends to provide to interested persons upon publication of a notice of proposed exemption in the FEDERAL REGISTER is inadequate, the Department will so inform the applicant and will secure the applicant's written agreement to provide what it considers to be adequate notice under the circumstances.

(b) If a notice of proposed exemption is published in the FEDERAL REGISTER in accordance with § 2570.42 of this part, the applicant must notify interested persons of the pendency of the exemption in the manner and time period specified in the application or in any superseding agreement with the De-

partment. Any such notification must include:

(1) A copy of the notice of proposed exemption; and

(2) A supplemental statement in the following form:

You are hereby notified that the United States Department of Labor is considering granting an exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, or the Federal Employees' Retirement System Act of 1986. The exemption under consideration is explained in the enclosed Notice of Proposed Exemption. As a person who may be affected by this exemption, you have the right to comment on the proposed exemption by [date].¹ [If you may be adversely affected by the grant of the exemption, you also have the right to request a hearing on the exemption by [date].]²

Comments or requests for a hearing should be addressed to: Office of Exemption Determinations, Employee Benefits Security Administration, room _____,³ U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, ATTENTION: Application No. _____.⁴

The Department will make no final decision on the proposed exemption until it reviews all comments received in response to the enclosed notice. If the Department decides to hold a hearing on the exemption before making its final decision, you will be notified of the time and place of the hearing.

(c) The method used to furnish notice to interested persons must be reasonably calculated to ensure that interested persons actually receive the notice. In all cases, personal delivery and delivery by first-class mail will be considered reasonable methods of furnishing notice.

¹The applicant will write in this space the date of the last day of the time period specified in the notice of proposed exemption.

²To be added in the case of an exemption that provides relief from section 406(b) of ERISA or corresponding sections of the Code or FERSA.

³The applicant will fill in the room number of the Division of Exemptions. As of the date of this final regulation, the room number of the Division of Exemptions was N-5671.

⁴The applicant will fill in the exemption application number, which is stated in the notice of proposed exemption, as well as in all correspondence from the Department to the applicant regarding the application.