

§ 2570.44

(d) After furnishing the notice required by this section, an applicant must provide the Department with a statement confirming that notice was furnished to the persons and in the manner and time designated in its exemption application or in any superseding agreement with the Department. This statement must be accompanied by a declaration under penalty of perjury attesting to the truth of the information provided in the statement and signed by a person qualified under § 2570.34(b)(5) of these procedures to sign such a declaration. No exemption will be granted until such a statement and its accompanying declaration have been furnished to the Department.

§ 2570.44 Withdrawal of exemption applications.

(a) An applicant may withdraw his application for an exemption at any time by informing the Department, either orally or in writing, of his intent to withdraw.

(b) Upon receiving an applicant's notice of intent to withdraw an application for an individual exemption, the Department will confirm by letter the applicant's withdrawal of the application and will terminate all proceedings relating to the application. If a notice of proposed exemption has been published in the FEDERAL REGISTER, the Department will publish a notice withdrawing the proposed exemption.

(c) Upon receiving an applicant's notice of intent to withdraw an application for a class exemption or for an individual exemption that is being considered with other applications as a request for a class exemption, the Department will inform any other applicants for the exemption of the withdrawal. The Department will continue to process other applications for the same exemption. If all applicants for a particular class exemption withdraw their applications, the Department may either terminate all proceedings relating to the exemption or propose the exemption on its own motion.

(d) If, following the withdrawal of an exemption application, an applicant decides to reapply for the same exemption, he may submit a letter to the Department requesting that the application be reinstated and referring to the

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application number assigned to the original application. If, at the time the original application was withdrawn, any additional information to be submitted to the Department under § 2570.39 of these procedures was outstanding, that information must accompany the letter requesting reinstatement of the application. However, the applicant need not resubmit information previously furnished to the Department in connection with a withdrawn application unless reinstatement of the application is requested more than two years after the date of its withdrawal.

(e) Any request for reinstatement of a withdrawn application submitted in accordance with paragraph (d) of this section, will be granted by the Department, and the Department will take whatever steps remained at the time the application was withdrawn to process the application.

§ 2570.45 Requests for reconsideration.

(a) The Department will entertain one request for reconsideration of an exemption application that has been finally denied pursuant to § 2570.41 (a)(2) or (a)(3) of this part if the applicant presents in support of the application significant new facts or arguments, which, for good reason, could not have been submitted for the Department's consideration during its initial review of the exemption application.

(b) A request for reconsideration of a previously denied application must be made within 180 days after the issuance of the final denial letter and must be accompanied by a copy of the Department's final letter denying the exemption and a statement setting forth the new information and/or arguments that provide the basis for reconsideration.

(c) A request for reconsideration must also be accompanied by a declaration under penalty of perjury attesting to the truth of the new information provided, which is signed by a person qualified under § 2570.34(b)(5) of these procedures to sign such a declaration.

(d) If, after reviewing a request for reconsideration, the Department decides that the facts and arguments presented do not warrant reversal of its

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.