

Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 15, 1999 at 64 FR 18637. The notice allowed for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 27, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Inter-Agency Witness and Informant Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-854. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Individual or households. This form is used by law enforcement agencies (LEA) to bring alien witnesses and informants to the United States in "S" nonimmigrant classification. This form also provides the Department of States and the Immigration and Naturalization Service with information necessary to identify the requesting LEA, the alien witness and/or informant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 125 responses at 4 hours and 15 minutes (4.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 531 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 19, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10671, et al.]

Proposed Exemptions; Pacific Coast Roofers Pension Plan

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

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing 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, 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. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 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 (43 FR 47713, October 17, 1978) 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.

Pacific Coast Roofers Pension Plan (the Plan); Located in San Jose, California

[Application No. D-10671]

Proposed Exemption

The Department 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). If the exemption is granted, the restrictions of section 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) of the Code, shall not apply to the making of loans by certain banks (the Banks), under a loan program (the Program) providing for loans to Bank customers for residential and commercial re-roofing jobs that are performed by contributing employers to the Plan, pursuant to an arrangement in which the Plan will purchase certificates of deposit (the CDs) issued by the Banks, provided the following conditions are met:

(a) Alan D. Biller and Associates, Inc. (Biller), an independent investment manager with respect to the Plan's equities and fixed-income investments, determines on an on-going basis the appropriateness of the Plan's investment of up to 5% of the Plan's total assets in CDs, including CDs issued under the Program, with respect to the Plan's overall investment objectives and policy guidelines;

(b) Turner Dale Associates, Inc. (TDA), an independent investment manager with respect to the Plan's assets involved in the Program, which is also independent of the Banks, acts on the Plan's behalf pursuant to a written Investment Management Agreement to determine on an on-going basis whether the Plan should make each particular investment in the CDs under the Program, and should continue or terminate participation in the Program;

(c) TDA determines at least annually that the Banks participating in the Program are solvent institutions, based on analysis of all relevant information involving the Banks' financial status;

(d) The requirements of section 408(b)(4) of the Act are satisfied if any Bank participating in the Program is a fiduciary or other party in interest with respect to the Plan (see 29 CFR 2550.408b-4);

(e) The Plan's CDs will have a maturity date of at least one year from the date of issuance and will pay the maximum rates of interest provided by the Banks for CDs of the same size and maturity being purchased at the time of the transaction by customers of the Bank not participating in the Program;

(f) The Banks offer CDs provided under the Program to other, unrelated customers in the ordinary course of business;

(g) Interest rates on CDs under the Program, and the total net rates of return to the Plan, taking into consideration all expenses associated with the transaction, are at least comparable to or better than those rates which the Plan could obtain on similar fixed-income investments of similar risk and term at the time of each CD purchase;

(h) No person who is a party in interest with respect to the Plan, including contributing employers, trustees and other plan fiduciaries, receives a loan under the Program;

(i) The total outstanding amount of CDs purchased by the Plan from the Banks will not exceed 5% of the Plan's total assets at the time of any transaction;

(j) No Plan trustee currently engages in any personal or business transactions with a Bank which will be involved in the Program, and if a trustee engages in such transactions in the future, the trustee shall recuse himself or herself with respect to any decision regarding the Program on behalf of the Plan;

(k) The Plan's investment in CDs is not part of an agreement, arrangement or understanding designed to benefit any investment manager, other Plan fiduciary, or contributing employer, other than to the extent that residential or commercial re-roofing jobs will be performed by contributing employers to the Plan; and

(l) If a customer defaults on a loan, the Bank has no claim against, or recourse to, the CDs or other assets of the Plan.

Summary of Facts and Representations

1. The Plan, which covers workers in the roofing industry, is a multiemployer defined benefit plan established in accordance with section 302(c)(5) of the Labor Management Relations Act of

1947, as amended. The Plan currently has approximately 5400 participants and approximately \$300 million in net assets. The Plan is administered by a board of trustees (the Trustees) with an equal number of Trustees representing labor and management, who are the named fiduciaries of the Plan. The Trustees are authorized to appoint one or more investment managers to handle investment decisions for portions of the assets of the Plan. These Plan assets include fixed-income investments made pursuant to the Plan's investment guidelines established by the Trustees. The Trustees have appointed Biller to act as investment manager with respect to the decision to include the Program among the Plan investments.

Biller is an independent investment manager with respect to the Plan. Biller has no interest in, or affiliation with, the Bank. Biller will also not have any interest in, affiliation with, or any business dealings with any bank selected in the future to participate in the Program. Biller has determined that up to 5% of the Plan's assets may be invested in certificates of deposit (CDs) in accordance with the Plan's investment guidelines.

2. With respect to the Program, the Trustees have selected TDA as investment manager, within the meaning of Act section 3(38), with full authority and responsibility regarding the investment by the Plan in each particular CD under the Program. TDA, as investment manager, is an independent fiduciary with respect to the Plan, and is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940. TDA has experience handling investments for collectively bargained, jointly-trusted employee benefit plans subject to the Act. TDA, which is located in Burlingame, California, currently has approximately \$130 million in employee benefit plan assets under management.

3. The Plan proposes to invest up to 5% of its assets in CDs to be issued by various banks selected by TDA. The bank currently selected by TDA to issue CDs under the Program is United Labor Bank (hereinafter referred to as "the Bank"), although the Plan may invest in CDs issued by other Banks meeting the Program's standards and requirements. The Bank had assets in excess of \$67 million as of September, 1997. The Bank was incorporated in 1990 and operates branches in Oakland and Los Angeles, California. The Bank is a member of the Federal Home Loan Bank System, and is federally regulated. The Bank is subject to certain regulatory requirements

administered by the board of Governors of the Federal Reserve System, the Office of Thrift Supervision and the Federal Financial Institution Examination Council.

TDA is independent of the Bank, and will be independent of any Banks selected in the future to provide CDs under the Program. There will be no transactions between TDA and the Bank (or future Banks) that will interfere with the independence of TDA to serve as the Plan's investment manager for CD investment purposes. TDA will review, at least annually, the financial condition and creditworthiness of the Bank to ensure that it continues to be a solvent financial institution. Moreover, TDA would base its selection of any other Banks to participate in the Program on the Banks' capitalization, creditworthiness, and ability to provide the Plan maximum rates of returns on CDs.

The Bank is not currently a fiduciary for the Plan's assets and will not be a fiduciary for any assets of the Plan involved in the proposed CD investment.¹ In addition, with the exception of one Trustee who previously served on the Bank's board of directors, no member of the Plan's Board of Trustees has any ownership interest in the Bank, or maintains an account with the Bank. That Trustee owns 100 out of approximately 200,000 shares of stock in the Bank. The applicants represent that the Trustee will not participate in any decisions with respect to the Program. If, in the future, any member of the Board of Trustees acquires an interest in the Bank, that member will be precluded from participating in any decisions with

¹ Section 408(b)(4) of the Act states, in pertinent part, that the prohibitions of section 406(a) of the Act shall not apply to the investment of a plan's assets in deposits which bear a reasonable interest rate in a bank supervised by the United States or a State, if such bank is a fiduciary of such plan and if such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or an affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment. Thus, the Plan's proposed purchase of the CDs from a Bank that is a fiduciary or other party in interest with respect to the Plan would be exempt from the restrictions of section 406 by section 408(b)(4) of the Act if the conditions of the exemption, and the regulations thereunder (see 29 CFR 2550.408b-4), were met. However, the exemptive relief proposed herein would permit the Banks to make certain loans to customers for re-roofing jobs performed by contributing employers of the Plan pursuant to an arrangement involving the Plan's purchase of CDs from the Banks. The Department notes that such an arrangement is a separate transaction which would not be exempted by section 408(b)(4) of the Act. The Department also notes that the proposed exemption is limited only to relief from the prohibitions of section 406(a)(1)(D) of the Act which may result from the making of such loans pursuant to the described arrangement.

respect to the Program on behalf of either the Plan or the Bank.

Further, no Trustee currently engages in any personal or business transactions with the Bank. Should a Trustee wish to engage in personal or business relations with the Bank or other Banks that may become involved in the Program in the future, that Trustee must make his intention known to the Board and must remove himself from any considerations or decisions regarding the Plan's participation in the Program while such Banks are involved in the Program. As a result, the Trustees will not derive any financial benefit, such as banking services at a reduced cost, or business or personal loans under more favorable terms than those provided to other customers, as a result of the Plan's participation in the Program.²

4. The terms and conditions of the proposed agreement with the Bank are embodied in a written agreement (the Deposit Agreement). The Plan's initial \$1 million deposit will be invested in a master certificate of deposit (Master CD) at the Bank's regular 30-day rate for large CDs, subject to adjustment higher or lower each month. The Master CD is essentially the total pool of available assets for investment in the CDs at any given time.

5. Under the Program, after the Plan's initial investment in the CDs, and as subsequent investments in CDs are made, the Bank will make loans (the Loans) from its own funds to customers who meet the Bank's normal lending standard for similar loans, to finance re-roofing jobs (whether residential or commercial), provided the work is done by employers who are required under collective bargaining agreements to contribute to the Plan on behalf of the employees who would be doing the re-roofing work. As the Program proceeds, and new Loans are made, the Plan will have the opportunity each month to make additional CD investments. The Loans will be for at least \$1,500 and will have terms ranging from 2 to 5 years. The applicant represents that if the Bank makes Loans in a greater dollar amount than the dollar amount of CDs purchased by the Plan, the Plan will be under no obligation to make an additional CD purchase. Further, the applicant represents that there is no intention, express or implicit, to link the dollar amount of Loans made to Bank

²Section 406(b) of the Act states, in pertinent part, that a fiduciary with respect to a plan shall not deal with the assets of a plan in his own interest or for his own account and shall not receive any consideration for his personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

customers with the Plan's CD investments under the Program.

The Loans under the Program will not be made directly to Plan participants or parties in interest with respect to the Plan.³ More specifically, no Loans would be made to contributing employers under the Program. Further, the Trustees and other Plan fiduciaries involved in any decision regarding the Plan's participation in the Program will be prohibited from receiving Loans under the Program.

6. Each month TDA will consider whether, and to what amount, to invest in a specific CD under the Program. TDA will use its discretion to determine whether it is prudent to invest the principal amount of the Loans then outstanding, or some larger amount, in CDs. The amount determined by TDA to be prudent would then be transferred from the Master CD to a CD. The CD in which the Plan invests will have terms identical to those of CDs of the same size and maturity offered and sold by the Bank to unrelated customers not participating in the Program. The applicants represent that the CDs will have a maturity term of at least one year from the date of issuance. Further, the interest rates on the CDs will pay the maximum rates of interest for CDs of the same size and maturity offered by the Bank or Banks at the time of the CD investment.

All decisions concerning the Plan's CD investments will be made by TDA. TDA will determine whether the Plan should make CD purchases based upon a variety of factors, including: (1) The financial condition and creditworthiness of the Bank, or Banks, issuing the CDs; (2) the presence and extent of Federal Deposit Insurance Corporation (FDIC) protection for the Plan's CD investments; (3) the yield and liquidity of the CD in comparison to other CDs of similar risk and term; and (4) the expenses that the Plan will incur in connection with the purchase. In this manner, TDA will ensure that the total net rate of return to the Plan from the CD investments will be at least comparable to, or better than, the rate of return available on other fixed-income investments of similar risk and term at the time of the CD purchase. TDA will also be responsible for decisions to suspend purchases of CDs by the Plan based on these criteria. The Trustees will monitor TDA's investments to ensure that the CD purchases are

³Thus, the Department is providing no relief in this proposed exemption for any prohibited transactions that may occur as a result of a Bank making a Loan to a party in interest with respect to the Plan under an arrangement designed to benefit that party in interest.

consistent with the Plan's asset allocation guidelines. TDA has reviewed the Bank's financial condition and has determined that it is prudent for the Plan to invest in CDs of the Bank.

7. To ensure that the interest rate on Loans under the Program is at a fair market rate, the Bank will set the interest rate for the borrower at 4% more than the interest rate for the CD as set by TDA. As noted, CDs will pay the maximum rate of interest for CDs issued by the Bank. The 4% difference represents the Bank's compensation for its origination, servicing, marketing and assumption of the risk of loss with respect to the Loans. By setting the Loan rates in this manner, the Bank will ensure that interest rates and fees are reasonable, so that potential borrowers are not discouraged from seeking Loans. The Loan interest rate will in no way impact the return to the Plan on the CDs.

8. Counsel for the Bank has prepared an opinion that all CDs issued by the Bank are eligible for FDIC pass-through deposit insurance up to the maximum limit under current regulations of the FDIC (see 12 CFR Part 330). Pursuant to FDIC regulation section 330.14(a), deposits of an employee benefit plan, such as the Plan, are insured on a pass-through basis in an amount of up to \$100,000 per plan participant where certain recordkeeping requirements are met.⁴ Should any funds on deposit with the Bank or other Banks participating in the Program cease to be eligible for such insurance, the Plan will be entitled to withdraw such funds from such Bank(s) immediately.

9. If TDA reasonably believes that interest rates on CDs will decline during an upcoming period, TDA may establish a minimum rate at which the Plan will invest in a CD for that upcoming period that is not to exceed 25 basis points below the effective annual yield at the end of the preceding period on U.S. Treasury Notes with the same term. TDA will not invest in a CD that does not meet this threshold. TDA represents that this measure of flexibility will allow it to exercise its expertise as an investment manager to obtain for the Plan the maximum CD rate set by the Bank or Banks for a given period based on the anticipated change.

⁴The applicant represents that in order for FDIC insurance to be provided on a pass-through basis, FDIC regulation section 330.5 requires that a pension plan deposit be identified as such, and that records evidencing the ownership interests of each beneficiary under the plan be maintained by either the bank or the plan. The applicant represents that these requirements will be met with respect to the Program, and, accordingly, the CDs under the Program will be eligible for FDIC pass-through insurance.

10. Biller has the ongoing responsibility to determine whether up to 5% of the Plan's assets can prudently be invested in CDs in connection with the Program, and will make this determination based on, among other factors, the asset allocations for the Plan and the Plan's investment guidelines. TDA has the responsibility to monitor whether the Bank is financially secure, whether the CDs are at maximum rates, and whether it is in the best interest of the Plan to continue or suspend its participation in the Program with the Bank. Under the terms of the Deposit Agreement, the Plan has the right: (a) To inform the Bank prior to the beginning of a month of the minimum acceptable CD interest rate it will accept with respect to Loans made that month; (b) to suspend the transfer of assets from the Master CD to a CD in any month by giving notice to the Bank prior to the beginning of the month; and (c) to terminate its participation in the Program on 15 days' written notice to the Bank (upon termination, the Master CD would be paid to the Plan at the end of the month, and any outstanding CD would continue for a period of one year, at which time it would be paid to the Plan). Biller represents that based on its review of the Plan's projections of contributions, benefits and actuarial liabilities, it has determined that it is prudent for the Plan to invest up to 5% of its assets in federally-insured CDs issued at competitive market rates.

11. When, in the judgment of TDA, the expected rate of return on a CD issued by a Bank through the Program will not equal or exceed the rates available to the Plan from comparable, insured fixed-income investments, TDA will suspend or terminate the Plan's participation in the Program with respect to that Bank. TDA will make this determination by ensuring, based on relevant available information and its own expertise, that the interest rates on the CDs made available by the Bank remain comparable to other fixed-income investments of similar risk and duration and do not fall below the rates available for CDs offered by other banks.

12. The Plan's assets have been invested in a broadly diversified portfolio of fixed-income securities, common stocks and real estate investments. Biller has evaluated the Plan's portfolio of fixed-income investments and determined that the investment of up to 5% of net assets in insured CDs having rates of return which would be equal to, or greater than, those available in comparable, insured fixed-income investments would be an appropriate investment for the Plan. TDA has also determined that

the purchase of Master CDs and CDs through participation in the Program, under conditions which it can monitor, would be a prudent investment strategy for the Plan. These determinations are supported by TDA's assessment of the economic merits of the investments apart from any benefits that may accrue to the Plan's participants as a result of increased employment opportunities and employer contributions to the Plan that may be generated by the Program.⁵

13. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) Biller, an independent equities and fixed-income investment manager for the Plan, has reviewed the proposed investment Program and has determined that an investment of up to 5% of the Plan's assets in CDs, including CDs issued under the Program, is appropriate and consistent with the Plan's investment guidelines; (b) TDA, the independent investment manager with respect to the assets of the Plan

⁵In this regard, the Department notes that the Act's standards of fiduciary conduct will apply to the decision to include the Program among the Plan's investments, and to invest in particular CDs under the Program. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. Accordingly, the fiduciaries of the Plan must act "prudently" with respect to the decision to include the Program, as well as to the actual decision to commit Plan assets to the Program (including, where relevant, the determination of how much, if any, to invest in CDs under the Program, which banks to purchase the CDs from, and the maturity dates of the CDs). In order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Investing assets in CDs would not be prudent if such CDs would provide the plan with less return, in comparison to risk, than comparable investments available to the plan or if such CDs would involve a greater risk to the security of plan assets than other investments offering a similar return. The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in CDs, a plan fiduciary must consider only factors relating to the interests of the plan participants and beneficiaries in their retirement income. A decision to make an investment in CDs of a particular bank may not be influenced by non-economic factors, such as a desire to encourage the bank to make loans to finance re-roofing jobs where the work is being performed by contributing employers, unless the CD investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the Plan. Finally, we note that the granting of the exemption proposed herein should not be viewed as an endorsement by the Department of the Plan's participation in the Program or any CD purchases thereunder.

involved in the Program, has reviewed the Program and determined that it is in the Plan's interest based solely on the economic and financial merits of the Plan's involvement in the Program; (c) TDA will act on the Plan's behalf regarding the Plan's investment in Master CDs and CDs and will monitor all transactions relating to such investments; (d) the requirements of Act section 408(b)(4) will be satisfied if any bank participating in the Program is a fiduciary or party in interest with respect to the Plan; (e) the Plan's CDs will have a maturity of at least one year from the date of issuance and will pay the maximum rates of interest provided by the Bank for CDs of the same size and maturity; (f) the Bank will offer CDs provided under the Program to other, unrelated customers in the ordinary course of its business; (g) interest rates on CDs under the Program, and the total net rates of return to the Plan, taking into consideration all expenses associated with the transaction, will be at least comparable to or better than those rates which the Plan could obtain on similar fixed-income investments of similar risk and term at the time of each CD purchase; (h) TDA will determine at least annually that the Bank, or any other Bank participating in the Program in the future, is a solvent institution, based on an analysis of all relevant information involving the Bank's (or other Banks') financial status; (i) no person who is a party in interest with respect to the Plan, including contributing employers, Trustees and other plan fiduciaries, will receive a loan under the Program; (j) the total outstanding amount of CDs purchased by the Plan from the Banks will not exceed 5% of the fair market value of the Plan's total assets at the time of any transaction; (k) no Plan Trustee currently engages in any personal or business transactions with the Bank, and if a Trustee engages in such transactions in the future, the Trustee will recuse himself with respect to any decision regarding the Program on behalf of the Plan; (l) the Plan's investment in CDs is not part of an arrangement designed to benefit any investment manager, other Plan fiduciary, or contributing employer, other than to the extent that residential or commercial re-roofing jobs will be performed by contributing employers to the Plan; and (m) if a customer defaults on a Loan, the Bank has no claim against, or recourse to, the CDs or other assets of the Plan.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department,

telephone (202) 219-8881. (This is not a toll-free number.)

General Electric Pension Trust (the Trust); Located in Fairfield, Connecticut

[Application Nos. D-10679 through D-10682]

Proposed Exemption

The Department 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). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, as of October 1, 1998, to the lease (the Lease) by the Trust of office space in a certain commercial office building (the Property) to Transport International Pool, Inc. (TIP), a party in interest with respect to employee benefit plans of General Electric Company (GE) and/or an affiliate whose assets are held in the Trust, provided that the following conditions are satisfied:

(1) The Trust was and is represented for all purposes under the Lease by a qualified, independent fiduciary;

(2) The terms and conditions of the Lease are at least as favorable to the Trust as those the Trust could have obtained in a comparable arm's length transaction with an unrelated party;

(3) The rent paid to the Trust under the Lease is no less than the fair market rental value of the office space occupied by TIP, as established by a qualified, independent appraiser;

(4) The independent fiduciary for the Trust reviewed the terms and conditions of the Lease on behalf of the Trust and determined that the Lease was in the best interests of the Trust;

(5) The independent fiduciary monitors and enforces compliance with all of the terms and conditions of the Lease, and of the exemption (if granted), throughout the duration of the Lease; and

(6) The independent fiduciary expressly approves any renewal of the Lease, and the rental rate under such renewal is based upon an updated independent appraisal of the office space being leased to TIP (but in no event shall the rental rate be less than that for the preceding period).

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of October 1, 1998.

Summary of Facts and Representations

1. The Trust holds assets of the GE Pension Plan, which constitutes approximately 99% of Trust assets, and also of the Knolls Atomic Laboratories Pension Plan, ERC Retirement Plan, and Components Pension Plan for Puerto Rico (collectively, the Plans). The Plans are all defined benefit plans that cover employees of GE and various GE subsidiaries. As of October 5, 1998, the Plans had, in the aggregate, over 400,000 participants and beneficiaries. As of December 31, 1997, the Trust had total assets of approximately \$38.9 billion.

The trustees of the Trust are five individuals (the Trustees), who are officers of GE and/or its subsidiaries. The Trustees are appointed by the Benefit Plans Investment Committee of GE, an oversight committee that determines the investment policies of the Trust. The Trustees maintain overall responsibility for investment of the Trust assets. The specific responsibility for investment of the Trust assets that are relevant to the application rests with the General Electric Investment Corporation (GEIC), subject to the approval of one or more of the Trustees.

GEIC, a Delaware corporation and a wholly owned subsidiary of GE, is a registered investment adviser under the Investment Advisers Act of 1940. GEIC provides investment management and advisory services to a variety of GE-affiliated entities. As of January 1, 1998, GEIC had approximately \$53.25 billion of assets under management.

2. TIP, a Pennsylvania corporation, is a wholly owned subsidiary of Transport Pool Corporation, which is a wholly owned subsidiary of General Electric Capital Corporation. General Electrical Capital Corporation is a wholly owned subsidiary of General Electric Financial Services, Inc., which, in turn, is a wholly owned subsidiary of GE. TIP is primarily engaged in the business of semi-trailer sales and leasing. TIP sponsors its own pension plan, and its employees do not participate in the GE Pension Plan. Accordingly, TIP is not an employer (within the meaning of section 3(5) of the Act) with respect to the Plans whose assets are held in the Trust, but is a party in interest with respect to the Plans under section 3(14)(G) of the Act by virtue of its relationship to GE and other GE affiliates.

3. The transaction for which an exemption is requested involves the leasing, by the Trust to TIP, of office space in an 18-story office tower located at 18101 Von Karman Avenue, Irvine, California (i.e., the Property). The value of the Property, as of October 5, 1998, was approximately \$75 million.

The Property is within the Lakeshore Towers Project. Lakeshore Towers Limited Partnership Phase I (the Partnership) is a California limited partnership through which the Trust owns the Lakeshore Towers Project.⁶ The Lakeshore Towers Project consists of the Property, a 1,700 space parking garage, a restaurant, and a sporting club on approximately 15 acres of land. The Lakeshore Towers Project is located on land that is ground leased from unrelated parties. The land consists of seven separately parceled leasehold estates. It is located in the John Wayne Airport Area of Orange County, California.

Dorn-Platz & Company (the Property Manager), a realty company which is independent of GE and its affiliates, serves as a manager of the Property and is located in Glendale, California. In this capacity, the Property Manager oversees any new construction or developments, supervises and negotiates the leasing of space, and manages any financing and re-financing arrangements involving the Property.

4. TIP formerly had its local office in the Los Angeles business district. In late 1997, it began looking to relocate its office to Orange County, largely for the increased convenience of its employees and the need for a larger space. In the course of its search for space, it independently located the Property, unaware of the Partnership's affiliation with the Trust. TIP decided that it was interested in leasing space in the Property and entered into negotiations with the Property Manager. Only during negotiations with the Property Manager did TIP discover the relationship of the parties and the need to obtain an exemption from the prohibited transaction rules of the Act. Once this discovery was made, negotiations ceased, and the Trustees sought independent legal counsel regarding the possibility of obtaining an administrative exemption.

5. In accordance with the advice of counsel, the Trustees at that point retained John S. Adams, M.A.I., of John S. Adams & Associates, Inc., as an independent fiduciary to represent the Trust with respect to the Lease. Mr. Adams is a real estate appraiser who is licensed in the State of California. Mr. Adams represents that he and his firm are independent of the Trust, GE, and GE's affiliates (including TIP) and derive less than 1% of annual gross income therefrom. Mr. Adams states

that he is knowledgeable as to the subject transaction, for he has 26 years experience in the valuation and analysis of all types of real estate, including urban office buildings similar to the Property. Mr. Adams also acknowledges his duties, responsibilities, and liabilities in acting as a fiduciary under the Act to the Trust for purposes of the Lease.⁷

Mr. Adams prepared a report, dated September 9, 1998, which provides an appraisal of the Property, as well as an evaluation of the Lease. In the report, Mr. Adams states that he inspected and analyzed the Property, which has a net rentable area of 378,781 sq. ft. On the basis of a review of a number of comparable leases in the same general market area, Mr. Adams concluded that the space in the Property covered by the Lease had a fair market rental value, as of August 31, 1998, in the range of \$2.21 to \$2.48 per sq. ft. Mr. Adams' analysis of the Lease terms is described in Paragraph 7, below.

6. The Lease, which commenced on October 1, 1998, has a term of five years. The urgency to execute the Lease was due to TIP's immediate need for additional space to house its divisional sales and operations office. As of that date, the Trust had substantially completed the agreed upon tenant improvements: construction of a wall to separate the TIP office space from other rentable areas on the 10th floor of the Property, painting interior walls, etc. The cost to the Trust came to \$1.95 per sq. ft.

Under the Lease, TIP has leased approximately 2,532 rentable sq. ft. of space on the 10th floor of the Property, which constitutes approximately 0.67 percent of the rentable square footage in the Property. The space may be used for general office use only. In addition, TIP leases eight parking spaces allocated to TIP on an in-common, non-exclusive and unreserved basis in the parking facility for the Property at the monthly charge of \$60.00 per stall.

The Lease provides for a rental rate of \$2.40 per sq. ft. of rentable area, or \$6,076.80 per month. TIP is to pay its proportionate share of the Trust's real estate taxes and other expenses relating to the Property for years after 1998, to the extent that these taxes and expenses exceed those for the 1998 year (the "base" year). In addition, TIP is responsible for any additional taxes levied or assessed that are attributable to TIP's improvements to personal property within the leased space, its

activities with the leased space, or any transactions involving the leased space.

Late payments are subject to (1) an interest charge on amounts unpaid from the time due until paid to compensate the Trust for the loss of the use of amounts owed and (2) an additional 10% late payment charge to compensate for administrative expenses incurred by the Trust in handling delinquent payments.

TIP does not have any options or rights to expand or extend the Lease, nor has it received any period of free rent. Any assignments or subleases by TIP are void unless the Trust has provided prior written consent, and, if consented to, may be subject to additional charges. In such instances, TIP is not released from any of its Lease obligations. Any alterations to be made by TIP to the leased space during the term of the Lease are also subject to the Trust's written consent.

7. Prior to the execution of the Lease, Mr. Adams, the independent fiduciary, reviewed and approved the terms and conditions of the Lease on behalf of the Trust. In his report, dated September 9, 1998, Mr. Adams stated that such terms and conditions were at least as favorable to the Trust as those the Trust could obtain in a comparable arm's length transaction with an unrelated party. Mr. Adams noted that the effective rental rate was \$2.40 per sq. ft., which was at the upper end of the appraised range of \$2.21 to \$2.48 per sq. ft. for the Property. Mr. Adams took into account the fact that the Lease does not provide for periodic rental adjustments. He explained that if the Lease had been negotiated to include an escalation clause, the Trust would have been required to accept a lower rental rate than \$2.40 per sq. ft. for the initial years of the Lease. Mr. Adams stated that he considered the flat rental rate favorable to the Trust, as landlord, because it allows the Trust to obtain a higher starting rent upfront. In all other respects, Mr. Adams noted that the Lease provides TIP, as tenant, with no unusual market advantages.

Mr. Adams also determined that the Lease was in the best interests of the Trust. In this regard, Mr. Adams stated that the execution of the Lease would reduce building vacancy and enhance cash flow for the Trust with respect to the Property.

Finally, Mr. Adams has agreed to monitor and enforce compliance with the terms and conditions of the Lease, and of the exemption (if granted), throughout the duration of the Lease, and will take whatever actions necessary to safeguard the interests of the Trust with respect to the Lease. Mr.

⁶For convenience, this notice will refer to the Trust as the "landlord" under the Lease rather than to the Partnership through which the Trust owns Lakeshore Towers Project, in which the Property is contained.

⁷In this regard, Mr. Adams will confer with legal counsel having expertise with respect to the requirements of the Act, as needed.

Adams will also expressly approve any renewal of the Lease.⁸ The rental rate under such renewal will be based upon an updated independent appraisal of the office space being leased to TIP (but in no event shall the rental rate be less than that for the preceding period).

8. In summary, the applicant represents that the subject transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The Trust was and is represented for all purposes under the Lease by a qualified, independent fiduciary (i.e., Mr. Adams); (b) the terms and conditions of the Lease are at least as favorable to the Trust as those the Trust could have obtained in a comparable arm's length transaction with an unrelated party; (c) the rent paid to the Trust under the Lease is no less than the fair market rental value of the office space occupied by TIP, as established by a qualified, independent appraiser; (d) Mr. Adams, the independent fiduciary for the Trust, reviewed the terms and conditions of the Lease on behalf of the Trust and determined that the Lease was in the best interests of the Trust; (e) Mr. Adams will monitor and enforce compliance with all of the terms and conditions of the Lease, and of the exemption (if granted), throughout the duration of the Lease; and (f) Mr. Adams will expressly approve any renewal of the Lease, and the rental rate upon such renewal will be based upon an updated independent appraisal of the office space being leased to TIP (but in no event shall the rental rate be less than that for the preceding period).

Notice to Interested Persons

Notice of the proposed exemption will be given to all active employees of GE and its affiliates who are participants and beneficiaries in the plans whose assets are held in the Trust by posting a notice (along with a copy of the proposed exemption as published in the **Federal Register**) at GE locations, in areas that are customarily used for notices to employees with regard to employee benefits or labor relations matters. Notice of the proposed exemption will be given to former employees and retirees, and all others eligible to receive the Summary Annual Reports for the affected plans, by publication of a notice in the 1998 Summary Annual Reports, which are to

⁸It is represented that in the event it becomes necessary to appoint a successor independent fiduciary (the Successor) to replace Mr. Adams, the applicant will notify the Department 60 days in advance of such appointment. Any Successor shall be independent and possess comparable experience and responsibilities as Mr. Adams.

be mailed no later than December 15, 1999. In both instances, the notice shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing from all interested persons are due within 30 days following distribution of the 1998 Summary Annual Reports.

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

Jonas Builders, Inc. Restated Profit Sharing Plan (the Plan); Located in Milwaukee, Wisconsin

[Application No. D-10764]

Proposed Exemption

The Department 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). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a certain building, which contains a warehouse and a single-family residence (collectively; the Building), by the Plan to Mr. Gerald Jonas, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

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

(b) The fair market value of the Building has been determined by an independent qualified appraiser;

(c) The sale of the Building is a one-time transaction for cash;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the sale of the Building; and

(e) The Plan receives an amount equal to the greater of either: (i) The original acquisition cost of the Building plus any improvement costs and real estate taxes that were incurred by the Plan from the date the Building was acquired by the Plan until the date of the proposed sale (i.e., the total cost of \$1,929,422.73, as of December 31, 1998); or (ii) the current fair market value of the Building, as established by an independent qualified appraiser at the time of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which was established on December 28, 1970. As of April 27, 1998, the Plan had two participants, Mr. Gerald Jonas (Gerald Jonas) and his son Mr. Mark Jonas. Gerald Jonas is also the Plan's trustee. As of December 31, 1998, the Plan had total assets of \$8,649,839.

Jonas Builders, Inc. (the Employer) is the sponsor of the Plan. Gerald Jonas is the sole owner and shareholder of the Employer. The Employer is in the business of commercial and industrial real estate. The Employer was incorporated on November 25, 1981 in the State of Wisconsin and is located in Milwaukee, Wisconsin.

2. On April 22, 1991, the Plan purchased the Building from Scott Paper Company, an independent third party, for a purchase price of \$1,530,108. The original acquisition of the Building was financed through Catholic Family Insurance,⁹ which lent the Plan \$1,000,000 of the purchase price. The Plan paid the remaining \$530,108 in cash. As of May 28, 1999, the outstanding principal balance of the loan was \$276,984.98.¹⁰ The Plan paid the remaining \$530,108 in cash. At the time it was originally acquired, the value of the Building represented approximately 36.65% of the Plan's total assets.¹¹ The applicant represents that the Plan has incurred \$7,422 in improvement costs to install a loading dock. Furthermore, the Plan has paid \$391,892.73 in real estate taxes from 1991 (i.e., year of original acquisition) until December 31, 1998. Therefore, the total cost to the Plan for the Building was \$1,530,108 + \$7,422 + \$391,892.73 = \$1,929,422.73, as of December 31, 1998.

It is represented that Gerald Jonas, as the Plan's trustee, made the original decision to purchase the Building as an investment for the Plan.

3. The Building consists of a warehouse of approximately 217,000 square feet (the Warehouse) and a single family home (the Home). The Warehouse part of the Building is located at 4425 N. Washington Road, and the Home is located at 4513 N. Port Washington Road, in Glendale,

⁹The applicant represents that Gerald Jonas has a personal mortgage for another piece of property with Catholic Family Insurance, but that no other relationship exists between the parties.

¹⁰The applicant states that this loan will not be paid off as a result of the proposed transaction. Gerald Jonas will assume the Plan's obligation under the loan and the Plan will be released from further liability with respect to the loan.

¹¹The Department is not providing any opinion in this proposed exemption as to whether the acquisition and holding of the Building by the Plan violated any of the provisions of Part 4 of Title I of the Act.

Wisconsin. The Building is located in an area of other warehouse, office and manufacturing buildings which is approximately 4 miles north of downtown Milwaukee, Wisconsin. The applicant represents that the Building is not adjacent to any property owned by the Employer, Gerald Jonas, or any other parties in interest with respect to the Plan.

For the last several years, only a fraction of the Building has been leased. The Plan has attempted to find additional tenants for the Building. Recent tenants have been willing to enter into only short term leases. The applicant states that leasing the entire Building on a long-term basis would be very beneficial to the Plan.¹² However, the Plan has been unable to find a tenant or tenants willing to lease the entire Building in its current condition (as noted in paragraph 4 below) or to enter into any longer term leases.

The applicant represents that the Plan has attempted to sell the Building to unrelated parties and that the Building has been listed on the market for several years. However, the Plan has not received any acceptable offers for the Building. Polacheck Realty was the listing company.

4. The Building was appraised (the Appraisal) on January 18, 1999, by Paul A. Vandeveld (Mr. Vandeveld), MAI, an independent and qualified appraiser with Vandeveld and Associates Real Estate Appraisals located in Brookfield, Wisconsin. Mr. Vandeveld states that in appraising the Building, he valued both the Warehouse and the Home.

The Appraisal states that the Building consists of a four building complex that is partially occupied by two separate commercial tenants (Wilson Services and Jefferson Smurfit), which are using the Warehouse. Mr. Vandeveld notes that only 91,380 square feet of the Building is leased (which is only approximately 41% of the total square feet in the Building).

Mr. Vandeveld states that the Home is a modest frame structure which the assessment records indicate was built in 1890. The Home has a full basement, two upper level bedrooms, living room, dining room, kitchen and full bath. However, the exterior appearance of the Home is poor. Mr. Vandeveld concludes that because of the age of the Home, its small size and its poor appearance and condition, the value of the Home is minimal compared to the Warehouse.

In preparing the Appraisal, Mr. Vandeveld used the Cost Approach, the

Direct Sales Comparison Approach, and the Income Approach. However, because the Warehouse is mostly vacant, more reliance was placed on the direct sales comparison approach to value the Building. Mr. Vandeveld determined that the fair market value of the Warehouse and the Home was \$2,250,000 and \$40,000, respectively, for a total value of \$2,290,000, as of January 18, 1999.

5. The applicant represents that the proposed transaction is in the best interest and protective of the Plan because the sale of the Building will be for an amount equal to the greater of: (i) The original acquisition cost of the Building, plus any improvement costs and real estate taxes that were incurred by the Plan from the date of acquisition until date of the proposed sale (i.e., a total cost of \$1,929,422.73, as of December 31, 1998); or (ii) the current fair market value of the Building, as established by an independent qualified appraiser at the time of the sale. The Plan will not pay any commissions, costs or other expenses in connection with the sale of the Building.

The transaction will be a one-time cash sale, and will enable the Plan to diversify its investment portfolio. In this regard, the Plan has tried unsuccessfully over the last few years to sell the Building to an unrelated party. The applicant maintains that the Plan will sustain economic hardship if the Plan is forced to keep the Building and undertake costly renovations to the Building in order to make it attractive to either prospective tenants or a third party buyer.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

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

(b) The fair market value for the Building has been determined by an independent qualified appraiser;

(c) The sale of the Building will be a one-time transaction for cash;

(d) The Plan will not pay any commissions, costs or other expenses in connection with the sale of the Building; and

(e) The Plan will receive an amount equal to the greater of:

(i) The original acquisition cost of the Building, plus any improvement costs and real estate taxes that were incurred by the Plan since the date of the acquisition of the Building until the date of the proposed sale; or (ii) the

current fair market value of the Building, as established by an independent qualified appraiser at the time of the sale.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

¹²In this regard, the applicant represents that during the years 1991 through (and including) July, 1999, the aggregate rental income earned by the Plan from the Building was \$2,054,958.

such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 20th day of August, 1999.

Ivan Strasfeld,

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

[FR Doc. 99-22024 Filed 8-25-99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[IA 99-037]

Stanislaw Piorek, Ph.D.; Confirmatory Order Prohibiting Involvement in NRC- Licensed Activities (Effective Immediately)

I

Stanislaw Piorek, Ph.D. is a former employee of New Technology Development for Metorex, Inc. (MI). While employed by MI, he functioned as Radiation Safety Officer and Vice President. MI holds Nuclear Regulatory Commission (NRC) License Nos. 29-30342-02G and 29-30342-01. License No. 29-30342-02G authorizes distribution of generally licensed devices. License No. 29-30342-01 authorizes sealed sources for use and possession incident to the distribution of specifically licensed devices; research and development as defined in 10 CFR 30.4; manufacturing and testing of analyzer devices; installation and removal from analyzer devices; repair and servicing of devices; calibration of instruments, receipt, storage, and transfer of devices from customers for disposal; demonstrations of devices; and instruction and training in the use of devices.

II

On August 20, 1998, NRC conducted a safety inspection of activities authorized by MI's licenses. The inspection reviewed the circumstances surrounding the unauthorized distribution of x-ray fluorescence analyzer devices (SIPS Probes) from October 1997 through July 1998. Based on the findings of the August 20, 1998 inspection, the NRC's Office of Investigations (OI) initiated an investigation on August 24, 1998. The OI investigation determined that Stanislaw Piorek, Ph.D. deliberately failed to stop shipments of x-ray fluorescence analyzer devices during the period January 1998 through July 1998, knowing that MI was not authorized by the NRC to distribute

them. In addition, OI concluded that Dr. Piorek deliberately failed to submit quarterly reports to the NRC, regarding the transfer of radioactive material, for the fourth calendar quarter of 1997 and the first calendar quarter of 1998. As a result, the NRC has concluded that Dr. Piorek violated 10 CFR 30.10, "Deliberate Misconduct," in that Dr. Piorek caused the Licensee to be in violation of NRC requirements. Specifically: (1) in failing to stop distribution of x-ray fluorescence analyzer devices, Dr. Piorek caused the licensee to be in violation of 10 CFR 30.3; and (2) in failing to submit quarterly reports to the NRC, Dr. Piorek caused the licensee to be in violation of 10 CFR 32.52. Dr. Piorek has cooperated in the investigation of these matters and has admitted that these violations occurred.

III

In a telephone call on August 4, 1999, Dr. Piorek, through his attorney, agreed to issuance of a Confirmatory Order prohibiting him from engaging in NRC-licensed activities for a period of three (3) years from July 1, 1998, the date that Dr. Piorek ended his employment at MI and ceased involvement in NRC-licensed activities. On August 11, 1999, Dr. Piorek consented to the issuance of this Order with the commitments, as described in Section IV below. Dr. Piorek further agreed in the August 11, 1999 letter that this Order be effective upon issuance and that he waived his right to a hearing.

I find that Dr. Piorek's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Dr. Piorek's commitments be confirmed by this Order. Based on the above and Dr. Piorek's consent to this action, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 30 and 32, and 10 CFR 30.10, *it is hereby ordered, effective immediately, that:*

A. For a period of three years from July 1, 1998, the date that Dr. Piorek ended his employment at MI and ceased involvement in NRC-licensed activities, Dr. Stanislaw Piorek is prohibited from engaging in, or exercising control over individuals engaged in, NRC-licensed activities. NRC-licensed activities are

those activities that are conducted pursuant to a specific or general license issued by the NRC including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition covers the following activities: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

Dr. Piorek may, however, provide advice to personnel on their use of devices containing licensed materials if such advice is described in a plan for such activities, which is reviewed and approved by the RSO or authorized designee. This advice is limited to the use of devices, not the contained licensed material. Dr. Piorek is not permitted to provide advice concerning use or installation of licensed material or compliance with NRC requirements. In addition, the actual conduct of such activities must be under the supervision of an authorized user. For purposes of this Order, an authorized user is a person who is listed on the license as a user of, or is an individual who supervises other persons using, NRC licensed material.

B. No less than five (5) days prior to the first time that Dr. Stanislaw Piorek engages in, or exercises control over, NRC-licensed activities during a period of five (5) years following the three-year prohibition stated in Section IV.A above, the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, shall be notified in writing of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. This notice shall be accompanied by a statement by Dr. Stanislaw Piorek, under oath or affirmation, that he understands the applicable NRC requirements and is committed to compliance with NRC requirements.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Dr. Piorek of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Dr. Piorek, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North,