

accounts or due to the fact that the former client's identity as an interested person was not immediately determined.

In light of the fact that notification to interested persons was delayed, and in order to allow such interested persons the benefit of the full thirty (30) day comment period, the Department required, and the applicants agreed to, an extension of the deadline within which to comment and request a hearing on the proposed exemption until April 16, 2002.

During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file, including all submissions received by the Department, is available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on February 27, 2002, at 67 FR 9093.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department of Labor, telephone (202) 693-8551 (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 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) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of April, 2002.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-11031, et al.]

Proposed Exemptions; Northwoods Bank of Minnesota Employee Stock Ownership Plan (the 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

All interested persons are invited to submit written comments or requests 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.

**Northwoods Bank of Minnesota
Employee Stock Ownership Plan (the
Plan) Located in Park Rapids,
Minnesota**

[Application No. D-11031]

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 by individual accounts (the Stock Accounts) within the Plan of certain shares of common stock (the Shares) of Dorset Bancshares, Incorporated (the Holding Company) to the Holding Company, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The proposed sale is a one-time cash transaction;

(b) The Stock Accounts receive the greater of: (i) \$32,000 per Share, as currently appraised by an independent, qualified appraiser; or (ii) the current fair market value for the Shares established at the time of the sale by an independent qualified appraiser; and

(c) The Stock Accounts pay no commissions or other expenses associated with the sale.

Summary of Facts and Representations

1. Northwoods Bank of Minnesota (the Bank) is a community bank located in Park Rapids, Minnesota. The bank is a wholly-owned subsidiary of the Holding Company. Both the Bank and the Holding Company are closely-held corporations under Minnesota state law. Effective November 1, 1967, the Bank established the Plan as a profit sharing plan (the Original Plan) for the benefit of its employees.

In 1986, the Original Plan was converted to an employee stock ownership plan (i.e., the Plan). Effective February 15, 1995, the Plan also added a 401(k) salary deferral feature. Effective January 1, 1999, the Bank and the Holding Company each elected to be treated as a subchapter "S" corporation.

As of December 31, 2001, the Plan had 30 active participants and 6 inactive participants. Only the participants (both active and inactive) that have a Stock Account in the Plan will be affected by the proposed transaction.

Mark Hewitt (Mr. Hewitt) is the Chairman/CEO of the Bank, the president of the Holding Company, and a co-trustee of the Plan. Mr. Hewitt currently owns 194 Shares, which represents an approximately 91.5% ownership interest in the Holding Company. Brian Grave (Mr. Grave) is also a co-trustee of the Plan, and the Chief Financial Officer of the Bank. Mr. Grave does not own any interest in the Bank or the Holding Company.

2. On December 31, 1986, the Plan purchased 20 Shares of the Holding Company from Mr. Hewitt at a price of \$4,489.15 per Share, for a total purchase price of \$89,783. On April 18, 1996, the Plan sold 3 Shares to the Holding Company at a price of \$15,500 per Share, for a total purchase price of \$46,500.¹ The Stock Accounts have received distributions, as shareholders of an "S" corporation, in the following amounts:

Year	Amount of distribution
1999	\$15,476.12
2000	19,419.61
2001	1 35,957.52

¹Through 9/30/01.

Since 1996, the Plan has continued to hold the remaining 17 Shares (which represents approximately 8.02% of the outstanding Shares), but no additional Shares have been purchased or contributed to the Plan. These 17 Shares are held in thirty (30) Stock Accounts within the Plan. The applicant states that the certificates for the Shares are held at the Bank, while other contributions are invested in mutual funds unrelated to the Bank. The Plan's ownership of the 17 Shares represented 47.8% of total Plan assets, as of December 31, 2000. The Plan had approximately \$941,738 in total assets as of December 31, 2000.

3. The Plan was originally established to invest primarily in "qualifying employer securities" (QES), as defined under section 407(d)(5) of the Act. However, since 1995 the Plan's participants have made deferral contributions (pursuant to section

¹ The applicant represents that the original purchase of the Shares by the Plan and the subsequent sale of certain Shares to the Holding Company occurred before the Bank and the Holding Company elected subchapter "S" status. Therefore, the applicant states that such transactions were permitted by the statutory exemption under ERISA section 408(e) and the Internal Revenue Code section 4975(d)(13).

The Department expresses no opinion in this proposed exemption as to whether the Plan's purchase, holding or sale of the Shares met the requirements necessary for relief under section 408(e) of the Act or section 4975(d)(13) of the Code.

401(k) of the Code) to the Plan which have been invested in mutual funds. The Bank's matching contributions to the Plan have been made in cash, rather than in Shares. Consequently, the percentage of the Plan's assets invested in QES has declined over time and is expected to continue declining as additional cash contributions are made.²

Therefore, the applicant believes that the employee stock ownership portion of the Plan should be discontinued and proposes that the Plan sell the Shares to the Holding Company for cash at their fair market value. In this regard, the applicant states that section 408(d) of the Act excludes owner-employees (including shareholder-employees), and any corporation which is 50% or more owned by such persons (subchapter "S" corporations), from using the statutory exemption provided under section 408(e) of the Act for purchases or sales of QES. The applicant notes that section 408(d)(2)(B) of the Act provides an exception to this exclusion for a sale of QES to an employee stock ownership plan (ESOP) by a shareholder-employee or related subchapter "S" corporation. However, the applicant notes further that because the exception described in section 408(d)(2)(B) applies only to sales of QES to an ESOP, the applicant is requesting an individual exemption to permit the cash sale of the Shares by the Plan to the Holding Company.

4. The Shares were appraised on December 31, 2000 (the Appraisal). The Appraisal was prepared by the Bank Advisory Group, Inc. (BAGI), an independent consulting firm in Austin, Texas. BAGI provides appraisal services for closely-held banks and other financial institutions.

The Appraisal states that the Holding Company is a "shell" holding company for the Bank, a federally-chartered savings bank located in Minnesota. The Appraisal considered three valuation methodologies (i.e., the net asset value, the market value, and the investment value) of the Holding Company to determine the fair market value of the Shares.

The Appraisal relied primarily on the market value and the investment value in determining fair market value of the

² Section 407(d)(6) of the Act defines the term "employee stock ownership plan" as an individual account plan (A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase plan both of which are qualified, under section 401 of the Code, and which is designed to invest primarily in qualifying employer securities, and (B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

The Department is providing no opinion herein as to whether such requirements have been met.

Shares. Specifically, the Appraisal considered the following factors:

(i) The Holding Company's restricted market presence and relatively low future growth prospects when compared to that of larger, publicly-traded thrift organizations;

(ii) the Holding Company's small asset base;

(iii) the Holding Company's high level of ownership;

(iv) ongoing branch divestitures by larger financial institutions in outlying markets; and

(v) larger financial institutions' competitive advantage with regard to technology and customer diversification.

Based on these factors, BAGI determined that the Shares had a fair market value of \$26,000 per Share, as of December 31, 2000.

An update to the Appraisal (the Update) was prepared by BAGI on April 5, 2002. The Update states that the fair market of the Shares was \$32,000 per Share, as of December 31, 2001. Thus, the Plan's 17 Shares had a total fair market value of \$544,000 as of that date.

5. The applicant proposes that the Holding Company purchase the shares from the Plan in a one-time cash transaction. The Plan will pay no commissions or other expenses associated with the sale. The aggregate fair market value of the Shares will be determined by BAGI, an independent qualified appraiser, at the time of the transaction. In this regard, the Holding Company proposes to pay the Plan the greater of: (i) \$32,000 per Share, which is the fair market value per share established by BAGI, as of December 31, 2001; or (ii) the fair market value of the Shares as established by a further update of the Appraisal at the time of the transaction.

The applicant represents that the proposed transaction is in the best interest and protective of the Plan and its participants and beneficiaries. The sale of the Shares to the Holding Company will increase the liquidity and the diversification of the Plan's investment portfolio and allow the Plan to eliminate its employee stock ownership component.

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

(a) The proposed sale will be a one-time cash transaction;

(b) the Plan will receive the greater of (i) \$32,000 per Share, as currently appraised by BAGI; or (ii) the current fair market value for the Shares, as

established at the time of the sale by an independent qualified appraiser;

(c) the Plan will pay no commissions or other expenses associated with the sale;

(d) the sale will provide the Plan and its participants with more liquidity and an opportunity to increase their return with more diversified investments; and

(e) only the assets in Stock Accounts within the Plan will be affected by the transaction.

For Further Information Contact:

Ekaterina A. Uzlyan of the Department

at (202) 693-8540. (This is not a toll-free number.)

Louisville Electrical Joint Apprentice and Training Committee Trust Fund (the Fund) Located in Louisville, Kentucky

[Exemption Application No: L-10981]

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 procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the purchase by the Fund of an interest in a condominium regime (the Condo) from the International Brotherhood of Electrical Workers (IBEW), Local 369 Building Corporation (the Building Corporation), a party in interest with respect to the Fund; provided that, at the time the transaction is entered into, the following conditions are satisfied:

(1) The purchase by the Fund of the interest in the Condo is a one-time transaction for cash;

(2) the Board of Trustees (the Trustees), acting as named fiduciary on behalf of the Fund, prior to entering the transaction, determine that the transaction is feasible, in the interest of the Fund, and protective of the participants and beneficiaries of the Fund;

(3) an independent qualified fiduciary (the I/F) after analyzing the relevant terms of the transaction advises the Trustees that proceeding with the transaction would be in the interest of the Fund;

(4) the purchase price paid by the Fund for the interest in the Condo is the *lesser of*: (a) the total amount actually expended by the Building Corporation in the construction of the north wing unit (the Unit) of the condominium building (the Condo Building), as

documented in writing and approved by the I/F, plus the value of that portion of the land underlying such Unit, which is equivalent to the percentage of the square footage of such Unit to the total square footage in the Condo Building, plus the value of the same portion of any other common elements of the Condo; or (b) the fair market value of the Fund's interest in the Condo, as determined by an independent, qualified appraiser, as of the date of the transaction, provided that such value does not exceed \$2,655,000, the fair market value of the Fund's interest in the Condo, as determined by such independent, qualified appraiser, as of December 11, 2001;

(5) the terms of the transaction are no less favorable to the Fund than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(6) the Fund does not purchase the interest in the Condo or take possession of the Unit in the Condo Building until such Unit is substantially completed;

(7) the Fund has not been, is not, and will not be a party to the construction financing loan or the permanent financing loan between the IBEW, Local Union 369 (the Local) and the Bank of Louisville (the Bank);

(8) the Fund does not pay any commissions, sales fees, or other similar payments to any party as a result of the proposed transaction, and the costs incurred in connection with the purchase by the Fund at closing does not include, directly or indirectly, interest incurred by the Building Corporation on the construction financing loan or the permanent financing loan from the Bank;

(9) under the terms of the loan agreement between the Bank and the Fund, the Bank in the event of a default by the Fund has recourse only against the interest in the Condo and not against the general assets of the Fund; and

(10) under the terms of the loan agreement between the Bank and the Building Corporation, in the event of default by the Building Corporation, the Bank has no recourse against any assets of the Fund.

Summary of Facts and Representations

1. The Fund is an employee benefit welfare plan located at 1021 South Floyd Street (the Existing Facility) in Louisville, Kentucky. The Fund is maintained under a collective bargaining agreement between the Local and the Louisville Chapter, of the National Electrical Contractors Association (NECA). The Fund is designed to provide programs to recruit and train workers as electricians. In

addition, the Fund also provides continuing education and advanced training for electrical workers.

Members of the Local are covered by the Fund. As of December 1, 2000, there were 340 participants in the Fund.

As of June 30, 2001, the Fund had cash and cash equivalents of \$1,420,542 and a "net worth" of \$2,056,940. An unaudited balance sheet of the Fund's assets prepared by William P. Schmitz (Mr. Schmitz), the Fund's independent accountant, indicated that the Fund had, as of December 31, 2001, \$1,829,704 in cash and \$2,656,242 in "net worth."

2. The Trustees have authority to invest the assets of the Fund. Among the eight (8) individuals who serve as Trustees, four (4) are management representatives and four (4) are labor representatives. Two (2) of the Trustees, Scott Pulliam and Steve Silliman (Mr. Silliman), also serve as officers of the Local.

3. The Local is the sole shareholder of the Building Corporation, a Kentucky corporation. The Local and the Building Corporation are parties in interest with respect to the Fund, pursuant to section 3(14)(D) and 3(14)(G) of the Act, respectively.

4. The Building Corporation owns real estate (the Property) located at 4315 Preston Highway in Louisville, Kentucky. It is represented that this location offers immediate interstate access from the Louisville metropolitan area and has parking availability. The Property consists of an irregularly shaped level parcel of 3.09 acres of land. As of December 11, 2000, the Property was improved with two buildings. The first building, a two-story, 8,092 square foot concrete block structure (the Original Building) was used, as of December 11, 2000, for offices and meeting space for the Local. The second building, a 900 square foot concrete block garage (the Garage) located in the rear of the Property, was used, as of the same date, for storage by the Local. A sewage treatment plant was also located on the Property, as of December 11, 2000.

In 2001, the Building Corporation chose to expand the total square footage of the Original Building on the Property from 8,092 square feet to 53,353 square feet by adding a north and a south wing. Included in the site improvements to the Property are 110 striped parking spaces, asphalt cement paving, walks, lighting, and landscaping.

To finance the expansion of the Original Building, the Building Corporation obtained in March 2001, a construction loan in the amount of \$5.9 million dollars from the Bank. It is

represented that the Fund is under no obligation to the Bank or the Union under the terms of this loan.

5. It is represented that by March 15, 2002, the Building Corporation, as the developer of the Property, had filed documents establishing a condominium regime on the Property in accordance with Kentucky Horizontal Property law.³ Under the provisions of the Kentucky Horizontal Property Law,⁴ an owner of an interest in a condominium has the exclusive ownership of its unit and also has a right to share the common elements of the property with the owners of other units in the condominium. Except as otherwise provided, the common elements of a condominium include the underlying land, the foundations, main walls, roofs, halls, lobbies, stairways, entrances, exits, basements, yards, gardens, the installations of central services, and all other elements rationally of common use or necessary for upkeep and safety. It is represented that the amount of an ownership interest in a unit of a condominium is equivalent to the percentage representing the floor area of such individual unit to the total floor area of such condominium. It is further represented that this percentage is expressed at the time the condominium regime is established, is recorded with the county clerk, and cannot be altered without the agreement of all owners of the units of the condominium.

It is represented that the Building Corporation, as the developer of the Property, chose to use a condominium regime, because a traditional approach to dividing the Property, as subsequently improved, would have taken too long and have been more expensive. In this regard, numerous local governmental approvals and variances would have been required. It is represented that such approvals and variances would have created a delay in construction and in occupancy.

6. It is represented that the offices and union hall of the Local occupy the Original Building plus the south wing (32,079 square feet) of the Condo Building on the Property (approximately 60.13 percent (60.13%) of the total square footage in such building). The north wing (21,274 square feet) of the Condo Building on the Property (approximately 39.87 percent (39.87%) of the total square footage in such building) is intended to house the

³ It is represented that Kentucky Horizontal Property Law, KRS 381.805–381.910 creates a framework for developing and owning condominium units in the state of Kentucky.

⁴ KRS 381.830.(1)(a).

training facility and the administrative offices of the Fund.

7. An administrative exemption has been requested that would permit the Fund to purchase from the Building Corporation an interest in the Condo. In this regard, it is represented that in purchasing the interest in the Condo, the Fund will acquire a real property interest in the north wing, the land underlying the north wing, and any other common elements of the Condo. The amount of the Fund's ownership interest in the land underlying the north wing and any other common elements of the Condo will be equivalent to the percentage (approximately 39.87%) representing the square footage of the north wing of the Condo Building (21,274 square feet) to the total square footage of such building (53,353 square feet). Further, it is represented that the Fund's ownership of the interest in the Condo will be recorded as a deed for real property with the Clerk of Jefferson County.

8. It is represented that the proposed transaction is feasible in that the purchase of an interest in the Condo by the Fund is a one-time transaction for cash.

In addition to the purchase price, with regard to the acquisition of an interest in the Condo, the Fund will be responsible for paying the cost of recording the deed, the charges of title examination and title policy, the state, county, school, and fire tax assessments, and any other obligations required under Kentucky law governing condominiums. However, the costs incurred in connection with the purchase by the Fund at closing may not include, directly or indirectly, interest incurred by the Building Corporation on the construction financing loan or the permanent financing loan from the Bank. Further, the Fund may not pay any commissions, sales fees, or other similar payments to any party as a result of the proposed transaction.

It is represented that the Fund will be responsible for paying for its own electrical, gas, telephone, and water service on its Unit in the Condo Building. However, the Local and the Fund agree to base all cost-sharing for the common elements of the Condo on the percentage of each party's ownership interest in the Condo.

9. The proposed exemption contains conditions which are designed to ensure the presence of adequate safeguards to protect the interests of the Fund regarding the subject transaction. In this regard, the applicant agreed to hire an I/F to act on behalf of the Fund with respect to the acquisition by the Fund of the interest in the Condo. With regard

to the selection of the I/F, the Trustees received proposals from two (2) entities willing to serve as the I/F. Of the two candidates, the Trustees chose Independent Fiduciary Services, Inc. (IFS).

10. Pursuant to an agreement (the Agreement), dated October 22, 2001, the Trustees retained IFS to analyze relevant aspects of the proposed transaction and advise the Trustees, in the Trustees' capacity as the named fiduciary of the Fund, whether proceeding with the proposed transaction according to the proposed terms would be in the Fund's financial interest.

Pursuant to the terms of the Agreement, IFS is responsible for considering, at a minimum: (a) The appraisal of the fully completed Property, and evaluating the sufficiency of the methodology of such appraisal and the reasonableness of the conclusions reached in such appraisal; (b) the Fund's financial statements and projections of future cash flows and the Fund's expected ability to financially support the transaction, subject to certain limitations; (c) the proposed purchase and sale agreement, the condominium agreement, and other documents regarding the proposed sale, ownership, and occupancy of the Property; provided that IFS shall consider such documents solely from an investment perspective and shall be entitled to confer with and rely upon counsel for the Fund (the Fund's Counsel) regarding legal matters; and (d) the Fund's financial and business analysis of whether to proceed with the transaction, compared to leasing comparable space or purchasing other comparable space. Further, IFS is responsible for providing the Trustees with advice and conclusions about the foregoing matters by way of a written report.

It is represented that IFS is independent of the parties involved in the proposed transaction in that amounts paid or to be paid to IFS by the Fund in each of 2001 and 2002 are less than one percent (1%) of IFS's total revenues in each respective year. IFS confirms that it has registered as an investment adviser under the Investment Advisers Act of 1940 and acknowledges that with respect to its duties as set forth in the Agreement it is a fiduciary, as defined in section 3(21)(A)(ii) of the Act.

It is represented that although IFS was retained as a fiduciary, the Trustees remain responsible, as named fiduciary for the Fund, for deciding whether,

when, and on what terms to consummate the proposed transaction.⁵

IFS requested and has reviewed the following documents concerning the Fund and the proposed transaction: (a) The Prohibited Transaction Exemption Application, dated March 7, 2001; (b) the Department's response, dated March 26, 2001; (c) letters from the Fund's Counsel to the Department, dated April 27, May 30, and September 28, 2001; (d) the December 11, 2000, appraisal report prepared for the Bank by J. Michael Jones, MAI, and Jerome S. Cowens of J. Michael Jones and Associates, an independent, qualified real estate appraiser in Louisville, Kentucky (the Appraiser); (e) the December 11, 2001, appraisal report, prepared by the Appraiser and addressed to IFS, supplemented by a letter from the Appraiser to IFS, dated February 12, 2002; (f) the Construction/Term Loan Agreement, dated March 1, 2001, between the Bank and the Building Corporation; (g) the draft undated Condominium Sales Contract between the Building Corporation and the Fund; (h) the draft Declaration or Master Deed under which the condominium regime would be managed; (i) the proposed term sheet for a loan between the Bank and the Fund and draft loan documents; (j) audited financial statements of the Fund, dated June 30, 2000, prepared by Buschenberger, Darst & Eggers, LLC., CPAs; and audited financial statements of the Fund, as of June 30, 2001, and an unaudited balance sheet and income statement of the Fund, dated December 31, 2001, prepared by Mr. Schmitz, the Fund's accountant; (k) a Forecasted Statement of Cash Flows, dated June 20, 2001, prepared by Mr. Schmitz; and more detailed cash flow projections, dated February 12, 2002, prepared by Mr. Schmitz and the Fund's Counsel, further refined and tested by IFS; (l) layout drawings of existing and new structures, land, relationship to other structures and similar physical aspects; and (m) a breakdown of costs of construction prepared by Abel Construction Company (the General Contractor).

In addition, IFS met in person or telephonically with: (a) The Fund's Counsel, Thomas J. Grady, Esq. of Segal, Stewart, Cutler, Lindsay, Janes, & Berry, PLLC; (b) the Fund's accountant, Mr. Schmitz; (c) the Bank lending officer, Edward L. Shannon, Senior VP of the Bank; (d) the Appraiser; (e) the business

manager for the Local, Mr. Silliman; (f) the training director of the Fund, Steve Willingham; and (g) Ricky George (Mr. George) the Fund Chairman and one of the Trustees who represent the employers of electrical workers.

11. It is represented that because the Fund's Existing Facility is landlocked and cannot be expanded to meet the growing need for training electrical workers, the Trustees considered three (3) alternatives: (1) Purchasing another property and renovating it; (2) building a new training facility; and (3) leasing additional space. With regard to the first alternative, the Trustees engaged the help of a commercial real estate agent, Walter Wagner, Jr. Co., to assist them in finding a property to purchase and renovate. After considering at least six (6) sites, the Trustees became more interested in the second alternative, building a new facility that would satisfy the specific requirements of the Fund. Recognizing the appeal of a "one-stop" campus environment for the entire membership, the Trustees believe that the Unit in the Condo Building with proximity to the Local's union hall and offices is too attractive an offer not to act upon.

With regard to the third alternative, the leasing by the Fund of the amount of space it needs in the Condo Building or the leasing of such space in another property, the Trustees had a real estate professional prepare a draft lease based on an arm's length transaction between two commercial entities. It is represented that the rent of 21,274 square feet of space equivalent to that in the north wing Unit of the Condo Building at a fair market rental rate of \$14.00 per square foot would, over the course of 20 years, cost the Fund \$5,956,800.

Although evaluating alternatives to the proposed transactions is outside the scope of IFS's Agreement, IFS noted that the Fund's conclusion to buy rather than rent appears reasonable. In this regard, IFS noted that based on a rental value of \$14.00 per square foot, as established by the Appraiser, if the Fund were to rent the Unit in the Condo Building (or a similar one assuming availability), the Fund would pay as much in rent over 8.5 years as it is paying to purchase the interest in the Condo. At the conclusion of the 8.5 years, IFS's notes that the Fund would then either have to continue paying rent or find another facility.

12. The applicant maintains that the proposed transaction is in the interest of the participants and beneficiaries of the Fund in that the Fund will obtain the additional space needed to increase the number of training classes offered by the

⁵ The Department notes that the relief proposed herein, is conditioned upon the adherence by the Trustees to the material facts and representations set forth in the application file and upon compliance with the conditions, as set forth in this proposed exemption.

Fund and to accommodate more students per class. In this regard, in the mid-1980's the Fund acquired the Existing Facility to provide training for 125 apprentices. Despite the fact that, in 1999, the Fund began scheduling day and evening classes to utilize the Existing Facility more efficiently, the space (6,200 square feet) in such facility is inadequate to provide apprenticeship training for the 488 individuals currently attending school.

According to the applicant, there has been an increased demand for training that is expected to continue in the future. In this regard, an aging workforce and early retirements have contributed to a shortage of electrical workers and created a need for more trained apprentices. Further, in the last three (3) years, the number of refresher classes for experienced journeymen has doubled. In addition, due to the merger of several unions, the Fund's mission has evolved from providing training locally to providing training regionally. In this regard, the Fund now provides the sole training facility for IBEW electricians throughout 68 counties in Kentucky and 6 counties in southern Indiana.

The increase demand for training has also increased the need for classroom space. In this regard, in 1999, the Fund registered two additional programs with the State of Kentucky, a residential electrical program and a telecommunications program. It is represented that each of these programs requires a dedicated amount of space to provide hands-on-training, and each will require additional space as the demand for workers in each industry grows.

IFS represents that its responsibility does not include determining either the inadequacy of the Existing Facility or the adequacy of the new facility. However, as support for an assessment of whether the proposed transaction would be in the interest of the Fund's participants, IFS visited the Fund's Existing Facility. According to IFS, statements regarding the size, crowded conditions at the Existing Facility, lack of parking, and the condition of the neighborhood were confirmed by observation to reasonably support the conclusion of the Fund's Counsel about the Fund's needs. IFS also toured the fully constructed but as yet unoccupied new facility. According to IFS, statements made by the Fund's Counsel regarding the suitability of the new facility appear to be reasonable. In this regard, IFS states that the new facility is clean, spacious, and appears to be able to provide high quality classroom, lab and practical training venues to a

considerably larger student body than the Existing Facility, as well as space to provide communication training.

13. It is represented that the terms of the proposed transaction are on terms which are at least as favorable to the Fund as those which would have been negotiated at arm's length with an unrelated party. In this regard, it is represented that the purchase and sale agreement between the Fund and the Building Corporation will set the purchase price that the Fund will pay for an interest in the Condo. In this regard, the purchase price will be *the lesser of*: (a) The total amount actually expended by the Building Corporation in the construction of the Unit in the Condo Building, as documented in writing and approved by IFS, plus the value of that portion of the land underlying such Unit, which is equivalent to the percentage of the square footage of such Unit to the total square footage in the Condo Building, plus the value of the same portion of any other common elements of the Condo; or (b) the fair market value of the Fund's interest in the Condo, as determined by the Appraiser, as of the date of the transaction, provided that such value does not exceed \$2,655,000, the fair market value of the Fund's interest in the Condo, as determined by the Appraiser, as of December 11, 2001.

14. In this regard, on December 11, 2001, the Appraiser determined the fair market value of the Property, after the improvements were substantially completed. Specifically, the Appraiser established the fair market value of the north wing (*i.e.*, the Fund's Unit in the Condo Building) and the south wing (*i.e.*, the Local's unit in the Condo Building), "as condominiums," to be \$2,655,000, and \$3,520,000, respectively. According to the Appraiser, condominiums are, rarely, if ever, the size of the units in the Condo Building which are the subject of this proposed exemption. In addition, the Appraiser noted in the appraisal report that the units in this case are atypical due to their multi-purpose usage which makes finding reasonable comparables extremely difficult. In establishing the value of the north wing and the south wing, as condominiums, the Appraiser gathered information in the general area of the subject on sales of smaller office condominiums (850 to 4,100 square feet) in the \$85 to \$120 per square foot range. In this regard, the Appraiser assigned \$120 per square foot value to the north wing and \$105 per square foot value to the Original Building plus the south wing. In assigning these values, the Appraiser considered the smaller size, the entirely new construction, and

the higher degree of flexibility of use of the north wing making it more marketable and more valuable relative to the south wing, which though larger is less flexible because it includes both the renovated older structure and an auditorium.

Based on its review of the appraisal report, a letter from the Appraiser, dated February 12, 2002, and discussions with the Appraiser, IFS concluded that the methodology used by the Appraiser is reasonable under the circumstances and that the fair market value of \$2,655,000 for the Unit, including its proportion of the underlying land, as documented in the appraisal report, is reasonable.

15. It is represented that the entire cost of construction has been measured, allocated between the units, and certified as correct by the General Contractor. In this regard, it is represented that the total cost to construct the Fund's Unit in the Condo Building, including additional expenses allocated to the Fund's Unit, was \$2,490,570.48. It is represented that, including the value of an undivided interest in the underlying land and other general common property, the total cost of the Unit is \$2,771,863 (rounded).

Accordingly, IFS represents that based on the "lower of cost or market" standard, the price to be paid for an interest in the Condo by the Fund is the fair market value of the Unit of \$2,655,000, plus customary closing costs. According to IFS, closing costs could include simple interest on the price paid by the Fund from the date of the valuation by the Appraiser (December 11, 2001) to the date of the closing, at a rate not greater than the rate paid by the Building Corporation on the construction loan during such period. However, the Department has determined that as a condition of this exemption the costs incurred in connection with the purchase by the Fund at closing may not include, directly or indirectly, interest incurred by the Building Corporation on the construction financing loan or the permanent financing loan from the Bank.

16. In order to finance the acquisition of the interest in the Condo, the Fund will obtain permanent financing from the Bank. It is represented that the Bank has approved a loan to the Fund of up to \$2 million and up to 20 years. In acquiring the interest in the Condo for \$2,655,000, plus customary closing costs, the Fund intends to make a down payment in cash of no less than \$1 million dollars; and therefore, expects to borrow approximately \$1.7 million. It is intended that the Fund's down payment

on the purchase and the proceeds from the loan by the Bank to the Fund will be paid to the Building Corporation. The Building Corporation, in turn, will use the money it receives from the Fund to reduce the Building Corporation's outstanding indebtedness to the Bank.

Pursuant to a request from the Trustees, the Bank has offered two sets of interest rates for the loan between the Bank and the Fund. The first interest rate involves a floating rate of prime plus zero, (currently represented to be 4.75%) reset daily with any change in the prime rate. Payout is calculated over 120 months (ten years) of level payments. The Fund's Counsel confirms that the loan to the Fund by the Bank will have level payments of principal and interest over 120 months and does not include any balloon payment by the Fund at the end of such period. In addition, the Fund would have the choice of increasing the monthly payment or increasing the term to cover any future upward changes in the rate.

The second interest rate involves a rate fixed at the time of drawdown on the loan between the Bank and the Fund at the Federal Home Loan Bank five (5) year rate plus 200 basis points, (currently represented to be 7.00%). The rate would be reset on each fifth anniversary of such loan.

The Fund has indicated that it wants to and expects to repay the loan early. In this regard, it is represented that in both interest rate scenarios discussed above, there is no prepayment penalty, provided the source of the funds to prepay is from contributions to or operations of the Fund (*i.e.*, not a refinancing). The loan will be secured by the Unit, including rights to general common elements of the Condo, and by rents, if any, generated by such Unit, but not with liens on any other Fund property. It is represented that there is no cross collateral or cross defaults between the Fund's loan from the Bank and the Building Corporation's loan from the Bank.

It is represented that the choice between the two pricing structures is a matter of cost and risk preference, and, pursuant to the Agreement, is within the responsibility and authority of the Trustees, not IFS. In this regard, it is represented that the Trustees reviewed these two offers and have decided to accept the variable rate.

17. It is represented that the Fund has sufficient cash to make a monthly mortgage payment to the Bank and also to meet its ongoing obligation of providing training to participants. Because of the increase in employer contributions, it is represented that the Fund has a monthly net operating

excess of approximately \$70,000 dollars. It is represented that the contributions from employers after the current collective bargaining agreements expire on June 1, 2002, will be sufficient to meet all of the on-going obligations of the Fund. Furthermore, it is represented that even a decrease in employer contributions of 10 percent (10%) or 20 percent (20%) would not jeopardize operations of the Fund. In support of this representation, the applicant submitted a Forecast Statement of Cash Flows of the Fund, dated on June 20, 2001, prepared by Mr. Schmitz, the Fund's certified public accountant. Based on Mr. Schmitz's analysis, the applicant maintains that a decrease in employer contributions of 10 percent (10%) or even 20 percent (20%) by December 2001, would only reduce the Fund's monthly operating excess from approximately \$70,000 dollars to approximately \$63,583 and \$48,380 dollars, respectively.

It is represented that, in order to evaluate the ability of the Fund to own, finance and pay for an interest in the Condo, IFS reviewed the Fund's financial statements, and has defined, reviewed, and tested a projection of expected future cash flows of the Fund, dated February 2, 2002, prepared by Mr. Schmitz. Based on its review, IFS has concluded that the Fund is highly likely to have sufficient net cash after paying all costs of maintaining the school and training the members to be able to make all necessary debt service payments to retire the debt within its terms and may also accumulate cash during the period of loan servicing.

It is represented that the increase in the assets of the Fund is largely due to a negotiated increase in contributions from employers. Under the current collective bargaining agreement, the contribution rate to the Fund was one percent (1%) of the monthly labor payroll from June 1, 1999, until August 1, 1999. Then the contribution rate increased to 1.5 percent (1.5%) until June 1, 2000, when the rate further increased to 2.5 percent (2.5%). In addition, manhours increased from 2,059,668 in 1998, to 2,781,350 in 1999, to 3,190,710 in 2000, and to 3,652,569 in 2001. To be conservative, IFS assumed 2,921,000 manhours for 2001–2002, which is the average over the past four (4) years and a 20 percent (20%) reduction from the 2000–2001 level. IFS also assumed only a one percent (1%) increase in manhours, far below the actual annual compound growth over the past 11 years of about 7.5 percent (7.5%).

It is represented that the current contract expires June 1, 2002. IFS

represents that both the Local and the employer representatives to the Fund expect that the new contract will maintain the current formula and the current 2.5 percent (2.5%) contribution rate to the Fund. In this regard, IFS has incorporated this into its base case and assumed a labor rate increase of two percent (2%) per year.

IFS also reviewed the level and structure and nature of costs anticipated for the operation and maintenance of the Fund's Unit in the Condo and the school, as computed by the Fund's accountant. IFS notes that overall the majority of the costs of maintaining and operation the Unit are fixed on an annual basis. The costs of operating the school, other than semi-fixed instructors' salaries, tend to be variable with the number of students taught. IFS's assumptions, in this regard, were an annual 3 percent (3%) increase in personnel costs and five percent (5%) increase in operating costs. Accordingly, IFS conservatively assumed expenses increasing faster than revenues.

Overall, IFS concluded that the Fund can reasonably be expected to make all payments of interest and principal on its loan to acquire the property, maintain the property, and meet its expected training obligations.

18. As discussed in paragraph 5, above, the Fund's Counsel advised IFS that, consistent with Kentucky Horizontal Property Law, ownership of a condominium unit includes a proportional undivided interest in all the land within the condominium regime. According to IFS, this structure addresses the concern that the Fund would own only improvements and not land. In addition, IFS has addressed three (3) other areas of concern related to this ownership of the land: (1) the septic system; (2) the status of the Garage; and (3) the ongoing operating arrangements.

With regard to the first concern, it is represented that the Original Building was serviced by a septic system. It is further represented that the Property, including the Original Building, is now served by city sanitary sewers. The Building Corporation has advised IFS that the septic system has been removed; and the site had been inspected and found free of contamination. Despite environmental considerations being outside the scope of IFS's contract, IFS has advised the Trustees to ask the Building Corporation to indemnify the Fund for any preexisting environmental problems. It is IFS's understanding that the Fund will receive that indemnity.

With regard to the second concern, the Property includes an unheated

Garage used for storage. IFS represents that the Garage will be part of the common elements of the condominium regime.

With regard to the third concern, based on IFS reading of the relevant law and advice from the Fund's Counsel, IFS understands that under the standard structure, the Local would have 60 percent (60%) of each vote, and could thus control every situation, and relegate the Fund to having no influence, control, or even input into the decisions of the Board of Directors (Directors) or the Council of Unit Owners (the Council). The Fund would be responsible for its proportionate share of all expenses, but would have no recourse other than the full arbitration process of an aggrieved owner.

IFS has concluded that this situation would not be in the interest of the Fund. Accordingly, as the Kentucky Horizontal Property Law permits other arrangements by agreement, IFS has directed certain changes in the Declaration or Master Deed to provide the Fund with greater assured participation. In particular, IFS has directed and the Building Corporation has agreed that: (a) The formula for sharing expenses in accordance with respective percentages of undivided interest in the common elements of the Condo and facilities may not be changed by the Council; (b) a super majority of $\frac{2}{3}$ of ownership interests, rather than a simple majority, is necessary to constitute a quorum; (c) rather than a majority of ownership interests being able to elect each of the Directors, the owner of the Local's unit will appoint two Directors and the owner of the Fund's Unit will appoint one; and (d) exceeding the annual budget increase caps requires a $\frac{2}{3}$ vote of the ownership interests, rather than a simple majority.

19. In conclusion, subject to certain caveats listed below, and subject to all of the terms of the Agreement, IFS finds that the purchase of the Unit at a price of \$2,655,000, plus reasonable closing costs and legal fees, is in the interest of the Fund. IFS's conclusion is subject to the following caveats: (a) The changes in representation on the Council and the Directors are incorporated into the Declaration or Master Deed and the Council Bylaws; (b) the Fund's Counsel has reviewed and approved the Condominium Sale Contract, the Declaration or Master Deed, and all other documents pertaining to the proposed transaction; (c) the loan between the Bank and the Fund does not exceed \$2 million in principal, and contains the basic rate, payment, and maturity structure described in IFS's

report, dated March 13, 2001, and has been reviewed and approved by the Fund's Counsel; and (d) all legal and physical conditions normally evaluated in connection with a commercial real estate transaction (including but not limited to environmental, title, Americans with Disabilities Act) have been evaluated and the Fund's Counsel has determined that there are no material problems. With regard to caveat (a) above, the Fund's Counsel has filed with the Department a copy of the Master Deed and a draft of the Bylaws containing the changes required by IFS in its March 13, 2002, report. Further, the Fund's Counsel has represented that caveats (b), (c), and (d) above have been satisfied.

20. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The purchase of an interest in the Condo by the Fund is a one-time transaction for cash;

(b) the Trustees, acting as named fiduciary on behalf of the Fund, prior to entering the transaction, will determine that the transaction is feasible, in the interest of the Fund, and protective of the participants and beneficiaries of the Fund;

(c) the proposed transaction will not be entered until IFS, after analyzing the relevant terms of such transaction, has advised the Trustees that proceeding with such transaction would be in the interest of the Fund;

(d) the purchase price paid by the Fund for the interest in the Condo is the *lesser of*: (a) The total amount actually expended by the Building Corporation in the construction of the Unit in the Condo Building, as documented in writing and approved by IFS, plus the value of that portion of the land underlying such Unit, which is equivalent to the percentage of the square footage of such Unit to the total square footage in the Condo Building, plus the value of the same portion of any other common elements of the Condo; or (b) the fair market value of the Fund's interest in the Condo, as determined by the Appraiser, as of the date of the transaction, provided that such value does not exceed \$2,655,000, the fair market value of the Fund's interest in the Condo, as determined by such Appraiser, as of December 11, 2001;

(e) the Fund will not pay any commissions, sales fees, or other similar payments to any party as a result of the proposed transaction, and the costs incurred in connection with the purchase by the Fund at closing will not

include, directly or indirectly, interest incurred by the Building Corporation on the construction financing loan or the permanent financing loan from the Bank;

(f) the terms of the transaction are no less favorable to the Fund than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(g) the Fund will not purchase the interest in the Condo or take possession of the Unit in the Condo Building until such Unit is substantially completed;

(h) the Fund has not been, is not, and will not be a party to the construction financing loan or the permanent financing loan between the Building Corporation and the Bank;

(i) under the terms of the loan agreement between the Bank and the Fund, the Bank, in the event of a default by the Fund, has recourse only against the interest in the Condo and not against the general assets of the Fund; and

(j) under the terms of the loan agreement between the Bank and the Building Corporation, in the event of default by the Building Corporation, the Bank has no recourse against any assets of the Fund.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include Mr. George, the Chairman of the Fund, and each participant in the Fund.

It is represented that these two classes of interested persons will be notified through different methods. In this regard, notification will be provided within seven (7) calendar days of the date of publication of the Notice in the **Federal Register**, to all participants in the Fund by posting on the general bulletin board at the Existing Facility and by posting at the union hall. Such postings will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2), which will advise interested persons of their right to comment and to request a hearing.

It is represented that notification will also be provided to Mr. George by first class mail, postage prepaid, return receipt requested within seven (7) calendar days of the date of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR

2570.43(b)(2), which will advise Mr. George of his right, as Chairman of the Fund, to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than thirty (30) days from the *later of*: (1) The date a copy of the Notice and a copy of the Supplemental Statement were posted at the Existing Facility and the union hall; or (2) the date Mr. George receives a copy of the Notice and a copy of the Supplemental Statement in the mail.

FURTHER INFORMATION CONTACT:

Angelena C. Le Blanc of the Department, telephone (202) 693-8551 (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, 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 19th day of April, 2002.

Ivan Strasfeld,

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

[FR Doc. 02-10321 Filed 4-25-02; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs Advisory Committee

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Office of Polar Programs Advisory Committee (1130).

Dates/Time: May 13, 2002; 8:30 am to 5 pm. May 14, 2002; 8:30 am to 2:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA.

Type of Meeting: Open.

Contract Person: Brenda Williams, Office of Polar Programs (OPP), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292-8030.

Minutes: May be obtained from the contact person list above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the polar research community; to provide advice to the Director of OPP on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Discussion of NSF-wide initiatives, long-range planning and GPRA.

Dated: April 23, 2002

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02-10294 Filed 4-25-02; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

**Westinghouse Electric Company;
Notice of Receipt of Application for
Final Design Approval and Standard
Design Certification of the AP1000
Standard Plant Design**

Notice is hereby given that the Nuclear Regulatory Commission (NRC, the Commission) has received an application from Westinghouse Electric Company dated March 28, 2002, filed pursuant to section 103 of the Atomic Energy Act and Title 10 of the Code of

Federal Regulations (10 CFR) part 52, for the final design approval and standard design certification of the AP1000 Standard Plant Design.

The AP1000 design is based on the AP600 design, which was certified on December 16, 1999. The AP1000 design is an approximately 1100 megawatts electric pressurized water reactor plant design in which passive safety systems are used for the ultimate safety protection of the plant. All of the safety systems are designed to be passive, where natural forces, such as gravity, natural circulation, and stored energy (in the form of pressurized accumulators and batteries), are used as the motive forces of these systems. The AP1000 application includes the entire power generation complex, except those elements and features considered site-specific. The acceptability of the tendered application for docketing and other matters relating to the requested rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be the subject of subsequent **Federal Register** notices.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 22nd day of April 2002.

For the Nuclear Regulatory Commission.

James E. Lyons,

*Director, New Reactor Licensing Project
Office, Office of Nuclear Reactor Regulation.*

[FR Doc. 02-10308 Filed 4-25-02; 8:45 am]

BILLING CODE 7590-01-P

U.S. COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: U.S. Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The U.S. Commission on Ocean Policy will hold its fifth regional