

3. *Delegations.* Under the authority vested in the Director, ATF, by Department of Justice Final Rule [AG Order No. 2650-2003] as published in the **Federal Register** on January 31, 2003, and by Title 28 CFR 0.130 and 0.131, the following authorities are delegated:

a. *Firearms.* The Assistant Director (Enforcement Programs and Services) is to make determinations on applications for relief from Federal firearms disabilities.

b. *Explosives.* The Chief, Arson and Explosives Programs Division, is to make determinations on applications for relief from Federal explosives disabilities.

4. *Redelegation.* The authorities outlined in paragraphs 3.a. and 3.b. above, may not be redelegated.

5. *Questions.* Questions regarding this order should be addressed to the Chief, Firearms Programs Division at 202-927-7770, or the Chief, Arson and Explosives Programs Division at 202-927-7930.

Date Signed: September 1, 2004.

Carl J. Truscott,

Director.

[FR Doc. 04-20636 Filed 9-13-04; 8:45 am]

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application Number D-11069]

#### Proposed Amendment to Prohibited Transaction Exemption 84-24 (PTE 84-24) for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Notice of proposed amendment to PTE 84-24.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 84-24 (49 FR 13208 (April 3, 1984) as corrected at 49 FR 24819 (June 15, 1984)). PTE 84-24 is a class exemption that provides relief for certain transactions relating to the purchase, with plan assets, of investment company securities or insurance or annuity contracts, and the payment of associated sales commissions to

insurance agents or brokers, pension consultants, or investment company principal underwriters that are parties in interest with respect to such plan. Currently, relief is not available under PTE 84-24 if an affiliate of the insurance agent or broker, pension consultant, insurance company, or investment company principal underwriter is a plan trustee that has investment discretion over any of the assets of the plan. If this proposed amendment is adopted, PTE 84-24 would extend relief to transactions relating to the purchase by plans of investment company securities or insurance or annuity contracts, and the receipt of associated sales commissions by an insurance agent or broker, pension consultant, or investment company principal underwriter in situations where an affiliate of the insurance agent or broker, pension consultant, or investment company principal underwriter is a trustee with investment discretion over plan assets that are not involved in the transaction.

**DATES:** If adopted, the proposed amendment will be effective as of the date the granted amendment is published in the **Federal Register**. Written comments and requests for a public hearing should be received by the Department on or before November 15, 2004.

**ADDRESSES:** All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5649, 200 Constitution Avenue, NW., Washington, DC 20210, (attention: D-11069). Interested persons are also invited to submit comments and/or requests for a hearing by the end of the comment period to the Employee Benefits Security Administration via fax to (202) 219-0204 or by electronic mail to: [moffitt.betty@dol.gov](mailto:moffitt.betty@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Christopher Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8544 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 84-24. PTE 84-24 provides an exemption from the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) <sup>1</sup> and from the taxes

imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code.

The Department is proposing to amend the above-described exemption on its own motion, pursuant to section 408(a) of ERISA 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).<sup>2</sup>

#### A. General Background

The prohibited transaction provisions of the Act generally prohibit transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Specifically, section 406(a)(1)(A) through (D) of the Act states that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) Sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) Lending of money or other extension of credit between the plan and a party in interest;

(C) Furnishing of goods, services, or facilities between the plan and a party in interest; or

(D) Transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

In addition, section 406(b) of ERISA provides that a fiduciary with respect to a plan shall not—

(1) Deal with the assets of a plan in his own interest or for his own account,

(2) In his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) Receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

Accordingly, unless a statutory or administrative exemption is applicable, the purchase with plan assets of investment company securities or insurance or annuity contracts from a party in interest would violate section 406(a) of ERISA. In addition, the receipt

should be read to refer as well to the corresponding provisions of section 4975 of the Internal Revenue Code of 1986 (the Code).

<sup>2</sup> Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Internal Revenue Code of 1986 (the Code) to the Secretary of Labor.

<sup>1</sup> References to section 406 of ERISA as they appear throughout this proposed amendment

of sales commissions by a pension consultant or insurance agent from an insurance company in connection with the purchase of insurance contracts by a plan where such pension consultant or insurance agent is a fiduciary with respect to the plan violates section 406(b) of ERISA.

## B. Regulatory Impact Analysis

### *Executive Order 12866*

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This proposed amendment has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed amendment is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

### *Paperwork Reduction Act*

This Notice of Proposed Rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3).

## C. Description of Existing Relief

PTE 84-24 provides relief for certain classes of transactions involving purchases with plan assets of insurance or annuity contracts and of securities issued by registered investment companies, and the receipt of sales

commissions in connection therewith. Section I and section II of PTE 84-24 provide retroactive and prospective relief for covered transactions. Section III describes the transactions covered by the class exemption as follows: (a) The direct or indirect receipt by an insurance agent or broker or a pension consultant of a sales commission from an insurance company in connection with the purchase, with plan assets of an insurance or annuity contract; (b) the receipt of a sales commission by a principal underwriter for an investment company registered under the Investment Company Act of 1940 (hereinafter, an investment company) in connection with the purchase, with plan assets, of securities issued by an investment company; (c) the effecting by an insurance agent or broker, pension consultant or investment company principal underwriter of a transaction for the purchase, with plan assets, of an insurance or annuity contract or securities issued by an investment company; (d) the purchase, with plan assets, of an insurance or annuity contract from an insurance company; (e) the purchase, with plan assets, of an insurance or annuity contract from an insurance company which is a fiduciary or a service provider (or both) with respect to the plan solely by reason of the sponsorship of a master or prototype plan; and (f) the purchase, with plan assets, of securities issued by an investment company from, or the sale of such securities to, an investment company or an investment company principal underwriter, when such investment company, principal underwriter, or the investment company investment adviser is a fiduciary or a service provider (or both) with respect to the plan solely by reason of: (1) The sponsorship of a master or prototype plan; or (2) the provision of nondiscretionary trust services to the plan; or (3) both (1) and (2).

Section IV contains general conditions applicable to all transactions described in section III. Section V of the class exemption contains conditions specific to transactions described in section III(a) through (d). In relevant part, section V(a)(1) provides that the insurance agent or broker, pension consultant, insurance company, or investment company principal underwriter may not be a trustee of the plan (other than a nondiscretionary trustee who does not render investment advice with respect to any assets of the plan).<sup>3</sup> In addition, section V(a)(3)

<sup>3</sup> Nothing herein should be construed to imply that a nondiscretionary trustee is not a fiduciary under the Act. See 29 U.S.C. § 1103(a)(1). A plan

provides that such agent or broker, pension consultant, insurance company or principal underwriter may not be a fiduciary who is expressly authorized in writing to manage, acquire or dispose of the assets of the plan on a discretionary basis.

Section VI of the class exemption defines certain terms contained in the class exemption. Specifically, section VI(b) defines the terms "insurance agent or broker," "pension consultant," "insurance company," "investment company," and "principal underwriter" to include such persons and any affiliates thereof. Thus, currently, PTE 84-24 does not permit a party to engage in a transaction with a plan if such party or its affiliate is a discretionary trustee or investment manager with respect to the plan.

The Department and the Internal Revenue Service (the Service) previously took the position that in certain situations PTE 77-9, which was later amended and superceded by PTE 84-24, was available for the purchase of insurance or annuity contracts through an agent or broker affiliated with an investment manager that was expressly authorized in writing to manage, acquire or dispose of a specific portion of the plan's assets.<sup>4</sup> In this regard, it was the view of the Department and the Service that the class exemption extended relief to a plan's purchase of an insurance or annuity contract through an agent or broker affiliated with an entity that managed certain of the plan's assets to the extent that the investment manager was not, with respect to the transaction, a fiduciary expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, the assets of the plan involved in the purchase transaction.

This proposed amendment, if granted, will incorporate in the class exemption the position the Department took in the Cardon Letter regarding an insurance agent or broker, pension consultant, or investment company principal underwriter that is affiliated with an investment manager for plan assets not involved in the purchase transaction. In this regard, if this proposed amendment is granted, the limitation in section (V)(a)(1) with respect to trustees will not apply where an insurance agent or broker, pension consultant, or

may expressly provide that a trustee is subject to the direction of a named fiduciary who is not a trustee, in which case the trustee shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to the Act.

<sup>4</sup> See letter from the Department of Labor and the Internal Revenue Service to John A. Cardon, Esq., *et al.*, part 6. (October 31, 1977 (the Cardon Letter)).

investment company principal underwriter is affiliated with a trustee having investment discretion over plan assets that are not involved in such purchase. Accordingly, the exemption, if finalized, will be available to an insurance agent or broker, pension consultant, or investment company principal underwriter that is affiliated with a trustee having investment discretion over plan assets not involved in the transaction on the same basis as it is currently available to the affiliates of entities that provide investment management services to plans.

#### **D. Discussion of the Proposed Exemption**

The Department is proposing this amendment in response to the consolidation that has occurred in the financial services industry. In this regard, insurance agents, brokers, pension consultants, and principal underwriters are now frequently affiliated with entities that serve as trustees to plans. These affiliations evolve as such entities engage in the normal course of doing business.

The Department recognizes that it is not uncommon for a plan trustee to have investment discretion solely with respect to a specific portion of the plan's assets. Pursuant to such an arrangement, the portion of the plan's assets that is not under the control of the trustee may be managed by a plan fiduciary that is independent of such trustee (and its affiliates). In these situations, the Department believes that there would be minimal, if any, risk of abuse or loss to a plan and its participants and beneficiaries to the extent that an independent plan fiduciary directed the effectuation of a covered transaction through an affiliate of such trustee. In this regard, the Department believes that the conditions contained in PTE 84-24, including the review of information required to be disclosed to the independent fiduciary and the subsequent approval of the transaction by such fiduciary, are sufficient to protect the interests of affected plans and their participants and beneficiaries. Therefore, the Department is proposing to amend PTE 84-24 to permit a party to engage in transactions described in section III (a) through (d) with a plan if the party is affiliated with a trustee or investment manager who does not have discretionary authority or control with respect to the plan assets involved in the transaction other than as a nondiscretionary trustee.

The Department is proposing to modify section V(g) of PTE 84-24 to clearly state that a party may use the exemption even if such party has an

affiliate that serves as a nondiscretionary trustee, or a directed trustee, with respect to the plan assets involved in the transaction.

#### **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 ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA.

Additionally, the fact that a transaction is the subject of an exemption does not 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 ERISA and 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) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and 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.

#### **Written Comments and Hearing Request**

The Department invites all interested persons to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments and requests for a hearing should state the

reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the above address.

#### **Proposed Amendment**

Under 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 2570, Subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 84-24 as set forth below:

1. Section V(a) is amended to read: “(a) The insurance agent or broker, pension consultant, insurance company, or investment company principal underwriter is not (1) a trustee of the plan (other than a nondiscretionary trustee who does not render investment advice with respect to any assets of the plan); (2) a plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code), (3) a fiduciary who is expressly authorized in writing to manage, acquire or dispose of the assets of the plan on a discretionary basis, or (4) for transactions described in sections III (a) through (d) entered into after December 31, 1978, an employer any of whose employees are covered by the plan. Notwithstanding the above, an insurance agent or broker, pension consultant, insurance company, or investment company principal underwriter that is affiliated with a trustee or an investment manager (within the meaning of section VI(b)) with respect to a plan may engage in a transaction described in section III(a) through (d) of this exemption on behalf of the plan if such trustee or investment manager has no discretionary authority or control over the plan assets involved in the transaction other than as a nondiscretionary trustee.”

2. Section V(g) is amended to read: The term “nondiscretionary trust services” means custodial services, services ancillary to custodial services, none of which services are discretionary, duties imposed by any provisions of the Code, and services performed pursuant to directions in accordance with ERISA § 403(a)(1). The term “nondiscretionary trustee” of a plan means a trustee whose powers and duties with respect to the plan are limited to the provision of nondiscretionary trust services. For purposes of this exemption, a person who is otherwise a nondiscretionary trustee will not fail to be a nondiscretionary trustee solely by reason of his having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Signed at Washington, DC, this 9th day of September, 2004.

**Ivan L. Strasfeld,**

*Director, Office of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

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## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, August 20, 2004, through September 2, 2004. The last biweekly notice was published on August 31, 2004, (69 FR 53098).

#### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention