

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 3,000 respondents. It is estimated that each survey will take 15 minutes to complete.

(6) *An estimate of the total public burden (in hours) associates with the collection:* An estimate of the total hour burden to conduct this survey is 750 hours.

If additional is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: October 23, 2001.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application Number: D-10616]

**Proposed Amendment To Prohibited Transaction Exemption (PTE) 79-15 (44 FR 26979, May 8, 1979); PTE 80-26 (45 FR 28545, April 29, 1980); PTE 80-83 (45 FR 73189, November 4, 1980); PTE 81-6 (45 FR 7527, January 23, 1981 (as amended at 52 FR 18754, May 19, 1987)); PTE 81-8 (46 FR 7511, January 23, 1981 (as amended by 50 FR 14043, April 9, 1985)); PTE 82-63 (47 FR 14804, April 6, 1982); PTE 83-1 (48 FR 895, January 7, 1983); PTE 84-14 (49 FR 9494, March 13, 1984) PTE 88-59 (53 FR 24811, June 30, 1988); PTE 91-38 (56 FR 31966, July 12, 1991); PTE 95-60 (60 FR 35925, July 12, 1995); PTE 96-62 (61 FR 39988, July 31, 1996)**

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice of proposed amendment to certain class exemptions.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to certain class exemptions. The proposed amendment would define the term "employee benefit plan", as such term is used in certain class exemptions, to include plans described in section 4975(e)(1) of the Internal Revenue Code of 1986 (the Code). If adopted, the proposed

amendment would affect individuals with beneficial interests in such plans, as well as the financial institutions that provide services and products to the plans.

**DATES:** Written comments and requests for a public hearing should be received by the Department on or before December 13, 2001. If adopted, the proposed amendment would be effective as of: May 1, 1979 with respect to PTE 79-15; January 1, 1975 with respect to PTE 80-26; December 1, 1980 with respect to Section I(B) of PTE 80-83 (the amendment would be effective January 1, 1975 with respect to the remainder of PTE 80-83); January 23, 1981 with respect to PTE 81-6; January 1, 1975 with respect to PTE 81-8; April 6, 1982 with respect to PTE 82-63; January 1, 1975 with respect to PTE 83-1; December 21, 1982 with respect to PTE 84-14; January 1, 1975 with respect to PTE 88-59; July 1, 1990 with respect to PTE 91-38; January 1, 1975 with respect to PTE 95-60; and July 31, 1996 with respect to PTE 96-62.

**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, Pension and Welfare Benefits Administration, Room N-5649, 200 Constitution Avenue, NW, Washington, DC 20210, (Attention: D-10616).

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219-8971, (this is not a toll-free number); or Paul Mannina, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 693-5600. (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 79-15; PTE 80-26; PTE 80-83; PTE 81-6; PTE 81-8; PTE 82-63; PTE 83-1; PTE 84-14; PTE 88-59; PTE 91-38; PTE 95-60; and PTE 96-62. These class exemptions provide relief from certain of the restrictions described in section 406 of the Employee Retirement Income Security Act of 1974 (ERISA), and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (F) of the Code, provided that the conditions of the relevant exemption have been met. The Department is proposing to amend the above-described exemptions 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, August 10, 1990).

The class exemptions described in this proposed amendment do not define the term "employee benefit plan". As a result, the Department has become increasingly aware of uncertainty regarding the scope of these class exemptions. To address this uncertainty, the Department has determined to amend each exemption in order to define the term "employee benefit plan" and "plan" as used therein.

Prior to the effective date of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 (1996)) (the Reorganization Plan), exemptions granted pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code were issued jointly by the Department of Labor (the Department) and the Internal Revenue Service (the Service). A number of class exemptions issued jointly by the Department and Service did not define the term "employee benefit plan" and "plan" as contained therein. Given the dual nature of the authority used to grant these exemptions, a number of practitioners believed that references to "employee benefit plan" and "plan" in these pre-Reorganization Plan class exemptions included employee benefit plans described in section 3(3) of ERISA<sup>1</sup> and plans described in section 4975(e)(1) of the Code.<sup>2</sup>

After consultation with the Service, the Department has determined that plans described in section 4975(e)(1) of the Code are included within the scope of relief provided by the following class exemptions:

PTE 75-1, 40 FR 50845 (1975);  
PTE 77-4, 42 FR 18732 (1977);  
PTE 77-7, 42 FR 31575 (1977), amended and redesignated as PTE 92-5 by 57 FR 5019 (1992); PTE 77-8, 42 FR 31574 (1977), amended and redesignated as PTE 92-6, 57

<sup>1</sup> Section 3(3) of ERISA provides that the term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

<sup>2</sup> Section 4975(e)(1) of the Code provides that, for purposes of that Code section, the term "plan" means: (A) A trust described in Code section 401(a) which forms a part of a plan, or a plan described in Code section 403(a), which trust or plan is exempt from tax under section 501(a); (B) an individual retirement account described in Code section 408(a); (C) an individual retirement annuity described in section Code 408(b); (D) a medical savings account described in Code section 220(d); (E) an education individual retirement account described in Code section 530, or (f) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph.

FR 5189 (1992); PTE 77-9, 42 FR 32395 (1977), amended and redesignated as PTE 84-24, 49 FR 13208 (1984); and PTE 78-19, 43 FR 59915 (1978), amended and redesignated as PTE 90-1, 55 FR 2891 (1990).

Exemptions issued subsequent to the effective date of the Reorganization Plan, however, were not issued pursuant to the dual authority of the Department and the Service. In this regard, section 102 of the Reorganization Plan generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. As a result, class exemptions granted after the effective date of the Reorganization Plan were issued pursuant to the sole authority of the Department.

Practitioners have noted that the Department, when issuing post-Reorganization Plan class exemptions, did not always expressly define the term "employee benefit plan" and "plan", as used therein. The practitioners noted that, given that such exemptions were issued solely by the Department, it remains unclear whether the term "employee benefit plan" includes a "plan" which is not subject to Title I of ERISA but is otherwise described in section 4975(e)(1) of the Code.

For example, practitioners cite uncertainty regarding whether IRAs and Keogh Plans are within the scope of the above-referenced exemptions. In this regard, the practitioners note that, while most IRAs and Keogh Plans are excluded from the term "employee benefit plan" for purposes of ERISA section 3(3),<sup>3</sup> such entities may be includable within the term "plan" for purposes of Code section 4975(e)(1). The practitioners, therefore, seek clarification as to whether IRAs and Keogh Plans are "employee benefit plans" for purposes of the relevant class exemptions.

In consideration of this uncertainty, the Department is proposing to clarify the scope of relief provided by the aforementioned class exemptions by defining the terms "employee benefit plan" and "plan" to include plans described in Code section 4975(e)(1). The Department notes that such clarification is consistent with the Department's longstanding intent to include IRA and Keogh Plans within the meaning of the terms "employee benefit plan" and "plan" with respect to the enumerated class exemptions.

### Notice to Interested Persons

Because many participants in plans described in section 4975(e)(1) of the Code, as well as financial institutions, could conceivably be considered interested persons, the only practical form of notice is publication in the **Federal Register**.

### 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 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 the Act which require, among other things, that a fiduciary discharge his duties with respect to 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; 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 ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

(3) 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 exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) If granted, the proposed amendment will be applicable to a transaction only if the conditions specified in the class exemption are met.

### Written Comments and Hearing Request

All interested persons are invited 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 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 amendment. Comments received will be available for public inspection with the referenced application at the above address.

### Proposed Amendment

Under 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, August 10, 1990), the Department proposes to amend the following class exemptions as set forth below:

1. PTE 79-15 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

2. PTE 80-26 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

3. PTE 80-83 is amended by adding the following paragraph 4. to Section II. b. to read as follows: 4. For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

4. PTE 81-6 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

5. PTE 81-8 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

6. PTE 82-63 is amended by adding the following paragraph (4) to section II. Definitions to read as follows: (4) For purposes of this exemption, the terms "employee benefit plan" and "plan"

<sup>3</sup> See 29 CFR 2510.3-2(d) and 29 CFR 2510.3-3(b).

refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

7. PTE 83-1 is amended by adding the following paragraph I. to Section III. Definitions to read as follows: I. For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

8. PTE 84-14 is amended by adding the following paragraph (n) to Part V—Definitions and General Rules to read as follows: (n) The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

9. PTE 88-59 is amended by adding the following paragraph (F) to Section III. Definitions to read as follows: (F) The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

10. PTE 91-38 is amended by adding the following paragraph (k) to Section IV—Definitions and General Rules to read as follows: The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

11. PTE 95-60 is amended by adding the following paragraph (j) to Section V—Definitions to read as follows: (j) The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

12. PTE 96-62 is amended by adding paragraph (g) to Section IV: Definitions to read as follows: (g) For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

Signed at Washington, DC, this 23rd day of October 2001.

**Ivan L. Strasfeld,**

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

[FR Doc. 01-27062 Filed 10-26-01; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50-285]

### Omaha Public Power District; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Omaha Public Power District (OPPD/the licensee) to withdraw its October 27, 2000, application for proposed amendment to Facility Operating License No. DPR-40 for the Fort Calhoun Station, Unit 1, located in Washington County, Nebraska.

The proposed amendment would have eliminated the refueling requirement for the 13.8 kV transmission line surveillance test. Fort Calhoun receives 161 kV and 345 kV off-site power from the switchyard at the plant site. Power from a 13.8 kV supply is also available in the switchgear room. The ability to use the 13.8 kV power supply, originally a construction power supply, was added to the technical specifications (TSs) during the licensing of the Fort Calhoun Station because in the NRC's review of the Fort Calhoun Final Safety Analysis Report, it was noted that the 345 kV lines passed over the 161 kV lines, and should a 345 kV line fall for any reason, the 161 kV line might also be lost. OPPD maintained that this line is not capable of supplying post-design basis accident loads and it is not credited in the licensing basis for mitigation of design basis accidents. In addition, OPPD stated the surveillance test places a significant burden upon the operating crew and involves the switching of many components. After several discussions with the staff, OPPD has decided to withdraw this request to re-evaluate the basis for this TS change.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 27, 2000 (65 FR 81927). However, by letter dated October 5, 2001, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 27, 2000, and the licensee's letter dated October 5, 2001, which withdrew the application for the license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically

from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index/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 (PDR) Reference staff by telephone at 1-800-397-4209, 301-415-4737 or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 23rd day of October 2001.

For the Nuclear Regulatory Commission.

**Alan B. Wang,**

*Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01-27158 Filed 10-26-01; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Revised

The agenda for the 487th ACRS meeting scheduled to be held on November 8-10, 2001, has been revised to reflect the changes noted below. Notice of this meeting was previously published in the **Federal Register** on Tuesday, October 23, 2001 (66 FR 53645).

*FRIDAY, NOVEMBER 9, 2001*

- The Committee will meet with NRC Commissioner McGaffigan between 1:30 and 2:30 p.m. to discuss items of mutual interest.

- Discussion of other items (Future ACRS Activities/Report of the Planning and Procedures Subcommittee, Reconciliation of ACRS Comments and Recommendations, Topics for Meeting the NRC Commissioners, and Proposed ACRS Reports) will be held about an hour later than previously announced in the **Federal Register** on October 23, 2001.

The agenda for Thursday, November 8 and Saturday, November 10, 2001 remains the same as previously announced in the **Federal Register** on October 23, 2001.

For further information contact: Dr. Sher Bahadur (telephone 301-415-0138) between 7:30 a.m. and 4:15 p.m., EDT.