

program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the extension without change of the information collection request (ICR) included in the suspension of pension benefits regulation issued pursuant to the authority of section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), which governs the circumstances under which pension plans may suspend pension benefit payments to retirees who return to work, or of participants who continue to work beyond normal retirement age (29 CFR 2530.203-3). A copy of the ICR may be obtained by contacting the office listed in the Addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 27, 2001.

**ADDRESSES:** Interested parties are invited to submit written comments regarding the collection of information. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N-5647, Washington, DC 20210. Telephone: (202) 219-4782 Fax: (202) 219-4745 (these are not toll-free numbers).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Section 203(a)(3)(B) of ERISA governs the circumstances under which pension plans may suspend pension benefit payments to retirees that return to work or to participants that continue to work beyond normal retirement age. Furthermore, section 203(a)(3)(B) of ERISA authorizes the Secretary to prescribe regulations necessary to carry out the provisions of this section.

In this regard, the Department issued a regulation which describes the circumstances and conditions under which plans may suspend the pension benefits of retirees that return to work, or of participants that continue to work beyond normal retirement age (29 CFR § 2530.203-3). In order for a plan to suspend benefits pursuant to the regulation, it must notify affected retirees or participants (by first class mail or personal delivery) during the

first calendar month or payroll period in which the plan withholds payment, that benefits are suspended. This notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found, (i.e., 29 CFR § 2530.203-3). In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits.

##### **II. Desired Focus of Comments**

The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

##### **III. Current Actions**

The Office of Management and Budget's approval of this ICR will expire on November 30, 2001. This notice requests comments on the extension of the ICR. The Department is not proposing or implementing changes to the existing ICR at this time in connection with this extension. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

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

*Title:* Suspension of Benefits Regulation pursuant to 29 CFR 2530.203-3.

*Type of Review:* Extension of a currently approved collection.

*OMB Number:* 1210-0048.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Total Respondents:* 74,872.  
*Total Responses:* 74,872.  
*Frequency of Response:* On occasion.  
*Total Annual Burden:* 18,718.  
*Total Burden Cost (Operating and Maintenance):* \$63,000.

Dated: September 25, 2001.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 01-24321 Filed 9-27-01; 8:45 am]

**BILLING CODE 4510-29-P**

## **PENSION AND WELFARE BENEFITS ADMINISTRATION**

[Application Number D-11034]

### **Proposed Amendment to Prohibited Transaction Exemption 80-26 (PTE 80-26) for Certain Interest Free Loans to Employee Benefit Plans**

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

**ACTION:** Notice of proposed amendment to PTE 80-26.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 80-26. PTE 80-26 is a class exemption that permits parties in interest with respect to employee benefit plans to make interest free loans to such plans, provided the conditions of the exemption are met. The proposed amendment, if adopted, would affect all employee benefit plans, the participants and beneficiaries of such plans, and parties in interest with respect to those plans engaging in the described transactions.

**DATES:** If adopted, the proposed amendment would be effective from September 11, 2001 until January 9, 2002. Written comments and requests for a public hearing should be received by the Department on or before November 13, 2001.

**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: PTE 80-26 Amendment).

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher J. Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219-8881. (This is not a toll-free number); or

Charles Jackson, 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 80-26 (45 FR 28545, April 29, 1980, as amended at 65 FR 17540, April 3, 2000).<sup>1</sup> PTE 80-26 provides an exemption from the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(B) and (D) of the Code.

The Department is proposing the amendment 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)(B) and (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—

(B) Lending of money or other extension of credit 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.

Accordingly, unless a statutory or administrative exemption is applicable, loans, including interest free loans, to a plan from a party in interest and the repayment of such loans may be prohibited.

In addition, section 406(b)(2) of the Act provides that a fiduciary with respect to a plan shall not, in his individual or any other capacity, act in a 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.

#### B. Description of Existing Relief

Section I of PTE 80-26 permits the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, and the repayment of such loan or other extension of credit in accordance with its terms or other written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only—

(1) for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or

(2) for a period of no more than three days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

On April 3, 2000, PTE 80-26 was amended through the addition of sections II and III to that exemption (65 FR 17540). Section II of PTE 80-26 allowed, from November 1, 1999 through December 31, 2000, the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, and the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof; provided that, among other requirements, the proceeds of the loan or extension of credit are used only for a purpose incidental to the ordinary operation of the plan which arises in connection with the inability of the plan to liquidate, or otherwise access its assets or access data, as a result of a "Y2K problem". Section III of PTE 80-26, as amended, provides a definition of the term "Y2K problem".

#### C. Discussion of the Proposed Exemption

The Department, on its own motion, proposes to amend PTE 80-26 in order to expand its interest free loan exemption to address potential liquidity problems faced by many employee benefit plans due to the tragic events that occurred on September 11, 2001. In this regard, as a result of the terrorist attacks on the World Trade Center and the Pentagon, all major stock markets in the United States were closed from September 11, 2001 to September 14,

2001. Among other things, the shutdown prevented the buying, selling and/or trading of securities on these markets.

The terrorist incidents of September 11, 2001 have led to temporary disruptions in the financial and securities markets that may have an impact on employee benefit plans. Temporary impairments to communication systems, pricing and valuation operations, and marketplace liquidity, could interfere with the operation of employee benefit plans.<sup>3</sup>

The Department notes that, following the September 11, 2001 incidents, telephone communications systems in lower Manhattan experienced partial or total interruptions that could prevent, for example, the immediate transmission of valuation information necessary to effectuate a participant's withdrawal request from a plan investment option. In such instance, a party in interest could provide a liquidity loan to a plan to facilitate the prompt execution of a participant's investment instructions.

In addition, satisfaction of plan participant withdrawal instructions occurring shortly after September 11, 2001, may require the plan fiduciary to liquidate portfolio assets during a period of fluctuating market conditions. In such instance, the proposed amendment would provide added flexibility in satisfying participant withdrawal requests.

Lastly, the Department notes that the September 11, 2001 incidents may have rendered certain asset valuation systems temporarily inoperable. The resulting delays with respect to the availability of certain portfolio valuations also may have affected the ability of plans to promptly satisfy participant investment instructions.

As a result, the Department has determined to amend PTE 80-26 to expand its provisions for interest free loans to employee benefit plans. Accordingly, beginning September 11, 2001 and ending January 9, 2002, the proposed amendment to PTE 80-26 would permit certain interest free loans with repayment periods of up to 120

<sup>1</sup> A minor correction was made to the title of the final exemption in a notice published in the **Federal Register** on May 23, 1980. (45 FR 35040).

<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 Code to the Secretary of Labor.

<sup>3</sup> In this regard, the Department recognized in a release dated September 14, 2001 (Release No. 01-36) that plan fiduciaries may encounter an array of problems with respect to the investment of employee benefit plan assets upon the reopening of the securities markets. Under these circumstances, plan fiduciaries may in good faith find it necessary and prudent to take extraordinary steps in order to safeguard plan assets and to facilitate the return to orderly markets. The Department further stated that, in taking these steps, plan fiduciaries should be sensitive to ensuring that the temporary procedures adopted, and the decisions made, are documented and adequately protect the interests of plans and their participants and beneficiaries.

days to address plan liquidity needs arising in connection with the September 11, 2001 attacks on the World Trade Center and the Pentagon.

#### *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; 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 does not extend to transactions prohibited under section 406(b)(1) and (3) of the Act or section 4975(c)(1)(E) or (F) of the Code;

(3) 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;

(4) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) 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 80-26 as set forth below:

#### *Section I. General Exemption*

Effective January 1, 1975, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only—

(1) for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or

(2) for a period of no more than three business days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

#### *Section II: Temporary Exemption*

Effective November 1, 1999 through December 31, 2000, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for

payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only for a purpose incidental to the ordinary operation of the plan which arises in connection with the plan's inability to liquidate, or otherwise access its assets or access data as a result of a Y2K problem.

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan; and

(e) The loan or extension of credit begins on or after November 1, 1999 and is repaid or terminated no later than December 31, 2000.

#### *Section III. September 11, 2001 Market Disruption Exemption*

Effective September 11, 2001 through January 9, 2002, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only for a purpose incidental to the ordinary operation of the plan which arises in connection with difficulties encountered by the plan in liquidating, or otherwise accessing its assets, or accessing its data in a timely manner as a direct or indirect result of the September 11, 2001 disruption;

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan; and

(e) The loan or extension of credit begins on or after September 11, 2001, and is repaid or terminated no later than January 9, 2002.

#### *Section IV: Definitions*

(a) For purposes of section II, a Y2K problem is a disruption of computer operations resulting from a computer system's inability to process data because such system recognizes years

only by the last two digits, causing a "00" entry to be read as the year "1900" rather than the year "2000".

(b) For purposes of Section III, the September 11, 2001 disruption is the disruption to the United States financial and securities markets and/or the operation of persons providing administrative services to employee benefit plans, resulting from the acts of terrorism that occurred on September 11, 2001.

Signed at Washington, DC, this 25th day of September, 2001.

**Ivan L. Strasfeld,**

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

[FR Doc. 01-24395 Filed 9-27-01; 8:45 am]

**BILLING CODE 4510-29-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:*

NUREG/BR-0238, Materials Annual Fee Billing Handbook

NUREG/BR-0239, Financial EDI Authorization (NRC Form 628, "Financial EDI Authorization")

NUREG/BR-0253, Electronic Funds Transfer—Fact Sheet

NUREG/BR-0254, Payment Methods (NRC Form 629, "Authorization for Payment by Credit Card")

2. *Current OMB approval number:* 3150-0190.

3. *How often the collection is required:* Annually.

4. *Who is required or asked to report:* Anyone doing business with the Nuclear Regulatory Commission, including licensees, applicants, and individuals who are required to pay a fee for inspections and licenses.

5. *The number of annual respondents:* 530 (50 for the NRC Form 628 and 480 for NRC Form 629).

6. *The number of hours needed annually to complete the requirement or request:* 42 (4 hours for NRC Form 628 and 38 hours for NRC Form 629).

7. *Abstract:* The U.S. Department of the Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit card. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and inspection fees to the NRC.

Submit, by November 27, 2001, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: <http://www.nrc.gov/NRC/PUBLIC/OMB/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-6 E6, Washington, DC 20555-0001, by telephone at 301-415-7233, or by Internet electronic mail at [BJs1@NRC.GOV](mailto:BJs1@NRC.GOV).

Dated at Rockville, Maryland, this 24th day of September 2001.

For the Nuclear Regulatory Commission.

**Brenda Jo Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01-24340 Filed 9-27-01; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

**[IA-01-022]**

### **In the Matter of Mr. Virgil J. Hood, Jr.; Demand for Information**

#### **I**

Mr. Virgil J. Hood, Jr. was the Vice President of Moisture Protection Systems Analysts, Inc. (MPSA or the Licensee) formerly located at 1350 Beverly Road, Suite 223, McLean, Virginia 22101. The Licensee was the holder of Byproduct Materials License No. 45-24851-02 (the license), which was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30 on June 19, 1986 and renewed on January 30, 1992. The license authorized MPSA to possess byproduct material, i.e., a Seaman Nuclear Corporation Model R-50 portable roofing gauge containing a nominal 40 millicuries (mCi) of Americium-241, for use in measuring moisture density of roof surfaces in accordance with the conditions specified in the license. On April 20, 1998, the Licensee's license was revoked.

#### **II**

Between December 31, 1997, and January 31, 2001, the NRC Office of Investigations (OI) conducted an investigation to determine the location of a moisture density gauge containing licensed material after the Licensee failed to pay the NRC annual license fee for fiscal year 1996, and had vacated the premises listed on its license without prior notice to the NRC. These actions by the Licensee had resulted in the NRC issuing an Order Suspending License (Effective Immediately) (Order Suspending License) to MPSA on May 15, 1997. The Order Suspending License imposed certain requirements upon the Licensee and required a response from the Licensee. Subsequently, after the Licensee failed to submit the required answer to the Order Suspending License, a Notice of Violation and Proposed Imposition of Civil Penalty—\$5,500, and Order Modifying Order Suspending License (Effective Immediately) and Order Revoking License (Order Revoking License) were issued to MPSA revoking its license on April 20, 1998. The Order Revoking License required that the Licensee maintain licensed material in safe storage, immediately notify the NRC of its current business location and status of licensed material, test the gauge for leak tightness, and transfer all licensed material to an authorized recipient