automated files of the database will be maintained in accordance with the General Records Schedule 6, Item 1a (Accountable Officers' Files), as published by NARA, unless a longer retention period is necessary because of pending administrative or judicial proceedings.

The retention and disposal procedures for this system of records are in accordance with the NARA disposition authority for the USMS which is NI 527–99–1, or the General Records Schedule as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Prisoner Services Division, United States Marshals Service, 11th Floor, CS–4, Washington, DC 20530–1000.

NOTIFICATION PROCEDURE:

Same as ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Requests for access must be in writing and should be addressed to the System Manager named above, Attention: FOI/PA Officer. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requesters's full name, current address, and date and place of birth. The request must be signed, dated, and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled ''Exemptions Claimed for the System.'' An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, Attention: FOI/PA Officer, stating clearly and concisely the identifying information required above in ''Record access procedures'', what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information may be exempt from contesting record procedures as described in the section entitled ''Exemptions Claimed for the System.'' An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Information is received from the prisoner, the courts, Federal, State, local, tribal and foreign law enforcement agencies, and medical care professionals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (e)(5) and (e)(8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. The rules are codified at 28 CFR 16.101(q) and (r).

[FR Doc. 04–9647 Filed 4–27–04; 8:45 am]

BILLING CODE 4410–04–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11184]

Proposed Amendment to Prohibited Transaction Exemption (PTE) 75–1, Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed amendment to PTE 75–1, Part II and Part V.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 75–1, Part II and Part V. PTE 75–1, Part II, permits the purchase or sale of a security in a principal transaction between an employee benefit plan and a broker-dealer, reporting dealer, or a bank. PTE 75–1, Part V, permits an extension of credit to a plan by a broker-dealer in connection with the purchase or sale of securities. The proposed amendment would affect participants, beneficiaries and fiduciaries of employee benefit plans, and broker-dealers, reporting dealers and banks entering into the described transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before June 14, 2004.

EFFECTIVE DATE: If adopted, the proposed amendments would be effective as of the date of publication of the final amendments in the **Federal Register**.

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 PTE 75–1 Amendment). Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or fax. Any such comments should be sent by e-mail to *lloyd.karen@dol.gov* or by fax to 202–219–0204 by the end of the scheduled comment period. All comments received will be available for public inspection at the Public Documents Room, Employee Benefits Security Administration, Room N–1513, 200 Constitution Ave. NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue NW., Washington DC 20210, 202–693–8540. (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 75–1, Part II and Part V (40 FR 50845, October 31, 1975). PTE 75–1, Part II and Part V, provide exemptions from certain of the restrictions of section 406 of ERISA, and from certain taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department is proposing this amendment to PTE 75–1 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).[1]

Executive Order 12866 Statement

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

[1] Section 102 of 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 exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

In the discussion of the exemption, references to specific provisions of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

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

The information collection request (ICR) included in the existing PTE 75–1 is currently approved under Office of Management and Budget (OMB) control number 1210–0092 (through January 31, 2004). The proposed amendment does not modify the information collection provisions of the exemption. Therefore, the Department has not submitted an ICR to OMB in connection with this Notice of Proposed Amendment to PTE 75–1.

Background

Section 406(a) of ERISA generally prohibits the sale of any property (including securities), the lending of money or other extension of credit, and the furnishing of goods or services, between an employee benefit plan and a ''party in interest.'' The term ''party in interest'' is defined in ERISA section 3(14) to include (as relevant herein) fiduciaries, persons providing services to the plan, and certain persons and entities related to them. Section 406(b) of ERISA prohibits a fiduciary of a plan from dealing with the assets of the plan in his own interest, from acting on both sides of a transaction involving the plan, and from receiving any consideration from any party dealing with the plan in connection with a transaction involving plan assets. Such transactions that involve plans described in section 4975(e)(1) of the Code are generally subject to the taxes imposed by section 4975(a) and (b) of the Code.

PTE 75–1 provides an exemption from certain of the restrictions of section 406 of ERISA and the taxes imposed by section 4975(a) and (b) of the Code for certain classes of transactions between employee benefit plans and securities broker-dealers, reporting dealers and banks. The exemption was granted in 1975 pursuant to applications made by the Securities Industry Association, the National Association of Securities Dealers and others. The record created as part of the exemption proceeding established that the securities industry is important in facilitating the raising of capital and in maintaining market liquidity, particularly for institutional investors. In the absence of the exemption, plans could encounter disruption of their normal selling and purchasing activities which, in turn, could increase costs to plans and possibly lead to harm to the plans, their participants and beneficiaries.

Description of Existing Relief

Part I of PTE 75–1 provides relief for agency transactions and services;[2] Part II for principal transactions; Part III for underwritings; Part IV for market-making; and Part V for extension of credit.

PTE 75–1, Part II

Part II of PTE 75–1 provides relief from the restrictions of 406(a) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, for the purchase or sale of a security between an employee benefit plan and a broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act), a reporting dealer who makes primary markets in securities of the U.S. Government or of any agency thereof and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon, or a bank supervised by the United States or a State.[3]

The exemption further provides relief from the restrictions of section 406(b) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, for the purchase or sale by a plan of securities issued by an open-end investment company registered under the Investment Company Act of 1940, provided that a fiduciary with respect to the plan is not a principal underwriter for, or affiliated with, such investment company within the meaning of sections 2(a)(29) and 2(a)(3) of the Investment Company Act of 1940.

The conditions of PTE 75–1, Part II, require that, in the case of a broker-dealer, it customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer. Reporting dealers and banks must customarily purchase and sell Government securities for their own accounts in the ordinary course of their businesses, and the purchase or sale between the plan and such reporting dealer or bank must be a purchase or sale of Government securities.

All transactions must be at least as favorable to the plan as an arm's length transaction with an unrelated party would be, and must not be, at the time of the transaction, a prohibited transaction within the meaning of section 503(b) of the Code.

Except with respect to the transactions described above involving shares of securities issued by open-end investment companies registered under the Investment Company Act of 1940, the broker-dealer, reporting dealer or bank may not be a fiduciary with respect to the plan, and the broker-dealer, reporting dealer or bank may be a party in interest or disqualified person with respect to the plan solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code or a relationship to a person described in those sections. For purposes of this condition, a broker-dealer, reporting dealer or bank is not deemed to be a fiduciary with respect to a plan solely by reason of providing securities custodial services for a plan. Lastly, the exemption for principal transactions also contains certain recordkeeping requirements.

PTE 75–1, Part V

Part V of PTE 75–1 provides relief from the restrictions of section 406 of ERISA and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, for any extension of credit to a plan by a broker or dealer registered under the 1934 Act.[4] The broker-dealer extending credit may not be a fiduciary with respect to any assets of the plan, unless no interest or other consideration is received by such

[2] Part I(a) expired on May 1, 1978. It ultimately was replaced by PTE 86–128 (51 FR 41686, Nov. 18, 1986).

[3] The exemption defines the terms ''broker-dealer,'' ''reporting dealer'' and ''bank'' to include such entities and any affiliate thereof, and ''affiliate'' is defined as in 29 CFR 2510.3–21(e) and 26 CFR 54.4975–9(e).

[4] The exemption defines the terms ''broker'' and ''dealer'' to include such entities and any affiliate thereof, and affiliate is defined as in 29 CFR 2510.3–21(e) and 26 CFR 54.4975–9(e).

fiduciary or any affiliate in connection with the extension of credit.

The extension of credit must be extended in connection with the purchase or sale or securities, must be lawful under the 1934 Act, and may not be a prohibited transaction within the meaning of section 503(b) of the Code. Lastly, the exemption for extensions of credit also contains certain recordkeeping requirements.

Description of Proposed Amendment

The Department first intends to clarify the exemption for purchases or sales of investment company securities currently contained in PTE 75–1, Part II(d). In order to provide more clarity, the Department proposes to reposition the following language found in section (d) of Part II of the exemption:

> Neither the restrictions of this paragraph nor (if the other conditions of this exemption are met) the restrictions of section 406(b) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall apply to the purchase or sale by the plan of securities issued by an open-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), provided that a fiduciary with respect to the plan is not a principal underwriter for, or affiliated with, such investment company within the meaning of sections 2(a)(29) and 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(29) and 80a–2(a)(3)).

The Department proposes to include the relief provided by this provision in a new paragraph (2) of the exemption for principal transactions, which specifically describes the relief provided by Part II of PTE 75–1. The Department has amended the language of this section to clarify that the fiduciary referenced therein is the fiduciary who makes the decision on behalf of the plan to enter into the transaction. The Department seeks public comments regarding the current utility of the exemption provided in the new paragraph (2).

The Department proposes to further amend the language of condition (d) which states, in relevant part, that:

> Such broker-dealer, reporting dealer or bank is not a fiduciary with respect to the plan, and such broker-dealer, reporting dealer or bank is a party in interest or disqualified person with respect to the plan solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code or a relationship to a person described in such sections. For purposes of this paragraph, a broker-dealer, reporting dealer, or bank shall not be deemed to be a fiduciary with respect to a plan solely by reason of providing securities custodial services for a plan.

The Department recognizes that, due to the consolidation in the financial services industry, this condition may now unduly restrict the ability of plans to engage in securities transactions. Thus, for example, the exemption may not be available to a bank or broker-dealer that was only a service provider with respect to the assets involved in the transaction, but exercised discretionary authority over a collective investment fund in which other assets of the plan were invested. In more recently granted exemptions, the Department has more narrowly focused the exclusion from relief on fiduciaries who have discretionary authority or control with respect to the investment of the plan assets involved in the transaction or who render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investment of those assets.[5]

In addition, the current condition may result in difficulties for employee benefit plans with bank trustees, if such bank serves as a directed trustee with respect to all of a plan's assets, even if the trustee has no investment discretion and no responsibility for directing the purchase and sale of securities on behalf of the plan. In such cases, PTE 75–1, Part II, may not be available to the plan for the purchase of securities from, or the sale of securities to, the bank trustee or any broker-dealer affiliate of the bank, notwithstanding that the plan fiduciary directing the trade is independent of the bank trustee.

In response to the requests to amend this condition, and in recognition of the importance to plans of obtaining these financial services and products from broker-dealers, reporting dealers and banks, the Department proposes to amend condition (d) of PTE 75–1, Part II. As amended, the exemption would permit plans to engage in transactions with broker-dealers, reporting dealers, banks and their affiliates except where the broker-dealer, reporting dealer, bank or an affiliate has or exercises any discretionary authority or control (except as a directed trustee) with respect to the investment of plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investment of those assets.[6]

For the reasons explained above, the Department likewise proposes to amend condition (a)(2) of PTE 75–1, Part V, which requires that the party in interest or disqualified person providing the extension of credit to the plan:

> [i]s not a fiduciary with respect to any assets of such plan, unless no interest or other consideration is received by such fiduciary or any affiliate thereof in connection with such extension of credit.

Under the proposed amendment, section (a)(2) would state that the party in interest or disqualified person extending credit to the plan:

> does not have or exercise any discretionary authority or control (except as a directed trustee) with respect to the investment of the plan assets involved in the transaction, nor does it render investment advice (within the meaning of 29 CFR section 2510.3–21(c)) with respect to those assets, unless no interest or other consideration is received by the party in interest or disqualified person or any affiliate thereof in connection with such extension of credit.

As noted above, this amendment would be consistent with more recent exemptions granted by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act 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 to which the exemption is applicable from certain other provisions of the Act 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, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with subsection (a)(1)(B) of section 404 of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of 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 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

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[5] *See e.g.*, PTE 94–20 (59 FR 8022, February 17, 1994); PTE 98–54 (63 FR 63503, November 13, 1998).

[6] Nothing herein should be construed to imply that a directed trustee is not a fiduciary under the Act. *See* 29 U.S.C. 1103(a)(1). A plan 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.

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 the Act and the Code, including statutory and other exemptions and transitional rules. Furthermore, the fact that a transaction is the subject of an exemption is not dispositive of whether the transaction would have been a prohibited transaction in the absence of such exemption.

Written Comments and Hearing Requests

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 amendment. 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 part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 75–1 as set forth below:

I. PTE 75–1, Part II, is amended in its entirety to read as follows:

(1) The restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and 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)(A) through (D) of the Code, shall not apply to any purchase or sale of a security between an employee benefit plan and a broker-dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), a reporting dealer who makes primary markets in securities of the United States Government or of any agency of the United States Government (''Government securities'') and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon, or a bank supervised by the United States or a State, and

(2) The restrictions of section 406(a) and 406(b) of the Act and 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, shall not apply to the purchase or sale by a plan of securities issued by an open-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), provided that no fiduciary with respect to the plan who makes the decision on behalf of the plan to enter into the transaction is a principal underwriter for, or affiliated with, such investment company within the meaning of sections 2(a)(29) and 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(29) and 80a–2(a)(3)).

The exemptions set forth in (1) and (2) above are subject to the following conditions:

(a) In the case of such broker-dealer, it customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer.

(b) In the case of such reporting dealer or bank, it customarily purchases and sells Government securities for its own account in the ordinary course of its business and such purchase or sale between the plan and such reporting dealer or bank is a purchase or sale of Government securities.

(c) Such transaction is at least as favorable to the plan as an arm's length transaction with an unrelated party would be, and it was not, at the time of such transaction, a prohibited transaction within the meaning of section 503(b) of the Code.

(d) Except with respect to transactions described in section (2) above, neither the broker-dealer, reporting dealer, bank, nor any affiliate thereof has or exercises any discretionary authority or control (except as a directed trustee) with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR section 2510.3–21(c)) with respect to those assets.

(e) The plan maintains or causes to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (f) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) Such broker-dealer, reporting dealer, or bank shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (f) below; and

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period.

(f) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (e) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan. For purposes of this exemption, the terms ''broker-dealer,'' ''reporting dealer'' and ''bank'' shall include such persons and any affiliates thereof, and the term ''affiliate'' shall be defined in the same manner as that term is defined in 29 CFR 2510.3–21(e) and 26 CFR 54.4975–9(e).

II. PTE 75–1, Part V, is amended in its entirety to read as follows:

The restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and 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) of the Code, shall not apply to any extension of credit to an employee benefit plan by a party in interest or a disqualified person with respect to the plan, provided that the following conditions are met:

(a) The party in interest or disqualified person—

(1) is a broker or dealer registered under the Securities Exchange Act of 1934; and

(2) does not have or exercise any discretionary authority or control (except as a directed trustee) with respect to the investment of the plan assets involved in the transaction, nor does it render investment advice (within the meaning of 29 CFR section 2510.3–21(c)) with respect to those assets, unless no interest or other consideration is received by the party in interest or disqualified person or any affiliate thereof in connection with such extension of credit.

(b) Such extension of credit—

(1) Is in connection with the purchase or sale of securities;

(2) Is lawful under the Securities Exchange Act of 1934 and any rules and regulations promulgated thereunder; and

(3) Is not a prohibited transaction within the meaning of section 503(b) of the Code.

(c) The plan maintains or causes to be maintained for a period of six years from the date of such transaction such

records as are necessary to enable the persons described in paragraph (d) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) if such party in interest or disqualified person is not a fiduciary with respect to any assets of the plan, such party in interest or disqualified person shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (d) below; and

(2) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period.

(d) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (c) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan. For purposes of this exemption, the terms ''party in interest'' and ''disqualified person'' shall include such party in interest or disqualified person and any affiliates thereof, and the term ''affiliate'' shall be defined in the same manner as that term is defined in 29 CFR 2510.3–21(e) and 26 CFR 54.4975–9(e).

Signed at Washington, DC this 22nd day of April, 2004.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration.

[FR Doc. 04–9632 Filed 4–27–04; 8:45 am]

BILLING CODE 4520–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2004–07; Application Number D–10659]

Class Exemption for the Acquisition and Sale of Trust REIT Shares by Individual Account Plans Sponsored by Trust REITS

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The exemption permits the acquisition, holding and sale of certain publicly traded shares of beneficial interest in a real estate investment trust (REIT), that is structured under state law as a business trust (Trust REIT), by individual account plans sponsored by the Trust REIT or its affiliates. The exemption affects participants and beneficiaries of employee benefit plans involved in such transactions, as well as the REITs and their affiliates that sponsor such plans.

FOR FURTHER INFORMATION CONTACT: Andrea W. Selvaggio, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210 (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 3, 2003, the Department published a notice in the **Federal Register** (68 FR 33185) of the pendency of a proposed class exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and from 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. Relief for the transactions was requested in an application (Application No. D–10659) submitted by the National Association of Real Estate Investment Trusts (NAREIT or the Applicant) pursuant to 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, August 10, 1990).[1]

The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. The Department received two public comments. Upon consideration of the comments received, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the comments are discussed below.

[1] Section 102 of 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 exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

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 class exemption has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this exemption 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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) (PRA), the Department submitted the information collection request (ICR) included in the Notice of a Proposed Class Exemption for the Acquisition and Sale of Trust REIT Shares by Individual Account Plans Sponsored by Trust REITs [referred to for the purposes of the ICR as Disclosures for Transactions with Trust REIT Shares] to the Office of Management and Budget (OMB) for review and clearance at the time the Notice of a Proposed Rulemaking (NPRM) was published in the **Federal Register** (June 3, 2003, 68 FR 33185). OMB approved the Notice under OMB control number 1210–0124. The approval will expire on July 31, 2006.

The Department solicited comments concerning the ICR in connection with the NPRM. The Department received one comment that provided updated information on the number of REITs and the number of Trust REITs described in