

Summary of Findings: Petitioner's proposal is to use a cordless drill or other equivalent drills to install surveying spads in the mine roof to minimize the potential of developing cumulative trauma disorders in the wrists, elbows, and shoulder of the surveyors. The petitioner propose to test for methane before using the drills and if one percent or more of methane is found, drilling will not begin and will be immediately stopped if a level of or greater than one percent methane is found. This is considered an acceptable alternative method for the Westvaco Mine. MSHA grants the petition for modification for the use Westvaco Mine with conditions.

Docket No.: M-2000-010-M.

FR Notice: 66 FR 9724.

Petitioner: ASARCO Incorporated.

Regulation Affected: 30 CFR 57.11055.

Summary of Findings: Petitioner's proposal is to use a vertical ladderway as an emergency escapeway, and as a secondary means of escape within the primary escapeway in the event of an extended power failure or repair to a damage hoist, to avoid hazards that are created by repeated unnecessary mine evacuations. This is considered an acceptable alternative method for the Coy Mine. MSHA grants the petition for modification for the Coy Mine during unplanned hoist outages to allow the Coy shaft ladderway to be designated as an escapeway 337 feet only when the Coy shaft hoist is incapacitated for unplanned reasons with conditions.

[FR Doc. 02-11727 Filed 5-9-02; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consol of Pennsylvania Coal Company

[Docket No. M-2002-039-C]

Consol of Pennsylvania Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable trailing cables and cords) to its Enlow Fork Mine (I.D. No. 46-07416) located in Greene County,

Pennsylvania. The petitioner requests a modification of the existing standard to increase the maximum length of trailing cables supplying power to continuous mining machines be 950 feet. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Cook & Sons Mining, Inc.

[Docket No. M-2002-040-C]

Cook & Sons Mining, Inc., 147 Big Blue Boulevard, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Spring Branch #2 Mine, (I.D. No. 15-18287), UZ Deep Mine, (I.D. No. 15-18469), and Nu Enterprise Mine (I.D. No. 15-17481) all located in Letcher County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded locking device to secure battery plugs on mobile battery-powered machines instead of a padlock to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Independence Coal Company, Inc.

[Docket No. M-2002-041-C]

Independence Coal Company, Inc., HC 78 Box 1800, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its White Oak Mine (I.D. No. 46-08933), WVOMSH Permit U-5021-91, located in Boone County, West Virginia. The petitioner proposes to transfer 2,400 volt high-voltage equipment from one mine to another mine within the company. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. General Chemical (Soda Ash) Partners (GCSAP)

[Docket No. M-2002-003-M]

General Chemical (Soda Ash) Partners (GCSAP) has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III mines)) to its

General Chemical Mine (I.D. No. 48-00155) located in Sweetwater County, Wyoming. The petitioner requests a modification of the existing standard to permit the use of the following non-permissible equipment in or beyond the last open crosscut: (i) A Leica Total Station Model No. TCR307 (6 volt battery), and (ii) a Milwaukee 14.4 Volt 1/2" Hammer Drill Model No. 0514-20, or equivalent. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 10, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 6th day of May 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02-11726 Filed 5-9-02; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D-10786]

Proposed Amendment to Prohibited Transaction Exemption 92-6 (PTE 92-6) Involving the Transfer of Individual Life Insurance Contracts and Annuities From Employee Benefit Plans to Plan Participants, Certain Beneficiaries of Plan Participants, Personal Trusts, Employers and Other Employee Benefit Plans

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

ACTION: Notice of proposed amendment to PTE 92-6.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 92-6. PTE 92-6 is a class exemption that enables an employee benefit plan to sell individual life insurance contracts and annuities to: (1) A plan participant insured under such policies; (2) a relative of such insured participant who

is the beneficiary under the contract; (3) an employer any of whose employees are covered by the plan; or (4) another employee benefit plan, for the cash surrender value of the contract, provided certain conditions are met. The proposed amendment, if adopted, would affect, among others, certain participants, beneficiaries and fiduciaries of plans engaged in the described transactions.

DATES: If adopted, the proposed amendment would be effective February 12, 1992. Written comments and requests for a public hearing should be received by the Department on or before June 24, 2002.

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 92-6 Amendment). Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "moffittb@pwba.dol.gov" or by FAX to (202)219-0204 by the end of the scheduled comment period. The application pertaining to the exemptive relief proposed herein (Application No. D-10786) and the comments received will be available for public inspection in the public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (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 92-6 (57 FR 5189, February 12, 1992), which amended Prohibited Transaction Exemption 77-8 (PTE 77-8) (42 FR 31574, June 21, 1977). PTE 92-6 provides an exemption from the restrictions of section 406(a) and 406(b)(1) and (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)(A) through (E) of the Code.

The amendment to PTE 92-6 proposed herein was requested in an exemption application filed by the Chicago, Illinois law firm of

Sonnenschein, Nath & Rosenthal on behalf of the General American Life Group (the Applicant). The Department is proposing the amendment 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).¹

A. General Background

The prohibited transaction provisions of the Act generally prohibit various transactions between plans covered by Title I of ERISA and certain related parties with respect to such plans. Specifically, section 406(a)(1)(A) 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—

(A) sale or exchange, or leasing, of any property 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, the sale of a life insurance contract, or annuity contract, by a plan to a party in interest is prohibited.

B. Description of Existing Relief

Section I of PTE 92-6 permits the sale of an individual life insurance or annuity contract by an employee benefit plan to: (1) A plan participant; (2) a relative of such insured participant who is the beneficiary under the contract; (3) an employer any of whose employees are covered by the plan; or (4) another employee benefit plan, if: (a) Such participant is the insured under the contract; (b) such relative is a "relative" as defined in section 3(15) of the Act (or a "member of the family" as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and the beneficiary under the contract; (c) the contract would, but for the sale, be surrendered by the plan; (d) with respect to sales of the policy to the employer, a relative of the insured or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy

and consents to the sale by the plan of such policy to such employer, relative or other plan; (e) the amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been had it retained the contract, surrendered it, and made any distribution owing to the participant on his vested interest under the plan; and (f) with regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders or highly compensated employees.

Section II of PTE 92-6 amended PTE 77-8 to provide that the relief for transactions described in part I would be available, effective October 22, 1986, for plan participants who are owner-employees (as defined in section 401(c)(3) of the Code) or shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of enactment of the Subchapter S Revision Act of 1982), if the conditions set forth in part I are met.

C. Discussion of the Proposed Amendment

The Department, at the request of the Applicant, proposes to amend PTE 92-6 in order to expand the coverage of the exemption to include the sale by an employee benefit plan (the Plan) of an individual life insurance or annuity contract to a personal or private trust (the Trust) established by or for the benefit of an individual who is a participant in the Plan and the insured under the policy, or by or for the benefit of one or more relatives (as defined in section I(2) of PTE 92-6) of the participant.²

The Applicant notes that many Plans provide pre-retirement death benefit protection that is funded in whole or in part by the purchase of individual whole life and universal life insurance policies on the lives of the Plan's

² Section 402(a)(1)(A) of the Act prohibits a direct or indirect sale or exchange of any property between a Plan and a party in interest. Section 406(a)(1)(D) of the Act prohibits a transfer to, or use by or for the benefit of, a party in interest, of any assets of the Plan. In most cases, the participant will be a party in interest with respect to the Plan under section 3(14)(H) of the Act, as an employee of an employer any of whose employees are covered by the Plan. In some cases, the participant or relative will also be a party in interest under section 3(14)(A) or (E) as a fiduciary of the Plan, or as an owner of 50% or more of the employer maintaining the Plan. The Trust would be a party in interest under section 3(14)(G) of the Act if 50% or more of the beneficial interest of such Trust is owned or held by persons described in section 3(14)(A) or (E) of the Act.

¹ 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.

participants. This is particularly true for Plans of small employers offering a pre-retirement death benefit, which do not have a sufficient number of participants to incur the actuarial risk of premature death of one or more participants in the absence of insurance. In addition, the cash value element of life insurance creates a funding vehicle for post-retirement pension benefits. The Internal Revenue Service has historically permitted Plans to invest in whole life insurance and universal life insurance by establishing specific standards for the provision of incidental death benefits funded by whole and universal life insurance.³

In conformity with these tax standards for insurance in Plans, pre-retirement death benefit protection under a Plan typically ceases upon the retirement of a covered participant. At that time, the Plan will need to obtain the policy's cash value to support post-retirement pension benefits, either by converting the policy's cash value to an annuity payment from the issuer of the policy, or realizing such cash value through a surrender of the policy to the issuer, or by a sale of the policy for an amount at least equal to the cash surrender value. Insured death benefit protection supported by policies may also cease before retirement when a participant terminates employment with a vested or partially vested benefit, when a Plan converts its funding method from individual policies to a group contract or to a different funding medium, when a Plan is amended to cease death benefit coverage for participants or for the class of employees to which a particular participant belongs, or when a Plan terminates.

In these circumstances, where a Plan will not continue the Policy in effect, Plans have historically permitted the insured participant, or other persons with consent of the participant, to purchase the policy. Sale of the policy by a Plan to, or for the benefit of, a participant allows the participant (or other owner) to keep the policy death benefit in effect while simultaneously allowing the Plan to realize the policy cash value. Maintaining the death benefit in effect is particularly advantageous where a participant, at the time the policy would otherwise be surrendered, is medically impaired so that he or she is uninsurable or insurable only at substantially higher premium rates (to reflect the higher risk of death) or where the policy contains valuable options or features that cannot

be replicated for the same premium cost in the current market. All of the above circumstances, and the advantage to the participants of allowing the Plan to sell the policy to his or her designee in lieu of surrender, were recognized by the Department in granting PTE 77-8 and PTE 92-6.

In many circumstances, the participant will have created a Trust as part of his or her estate plan to hold a policy or policies on his or her life. The Trust beneficiaries are typically the participant's spouse or children or both, or other relatives. The Trust will typically purchase insurance contracts on the life of the participant, including the policy from the Plan, if available, with funds contributed by the participant or by one or more of his relatives. The Trust will almost always be irrevocable (although a right to amend and revoke may be given to a person other than the insured who created the Trust) and will commonly provide for the participant's spouse or another relative, or an independent person, to be the trustee of the Trust. The governing instruments of Trusts holding life insurance policies vary markedly in format (depending on the applicable state law, the types of contracts held, the insured's desired disposition of the proceeds and other Trust assets, the likely tax impact, and the drafter's style).

The principal reason a participant will want someone other than himself or herself to own a policy purchased from a Plan is to conform to the federal estate tax standards for excluding the proceeds of the policy from the participant's gross estate. The aim is for the participant to divest himself or herself of all "incidents of ownership," or never to have had in the first instance any "incidents of ownership," in the policy.⁴ In general, this estate tax result can be achieved by having a policy (including all its "incidents of ownership") held by a relative of the participant (as allowed under PTE 92-6), as well as by a Trust. Accordingly, use of a Trust is not necessary for a participant to achieve this estate tax exclusion. However, a participant may prefer that a policy available from a Plan be purchased by a Trust rather than by an individual for a variety of non-tax reasons related to his or her family situation. Having the policy held by a spouse or other relative may expose the policy to undesirable consequences related to probate if, for instance, the owner should become incapacitated or pre-decease the participant. Those participants who are unsure of their

own or their relatives' continued capacity to act as owners and stewards of the policy and its proceeds may indeed prefer to have the policy held within a Trust under the control of an independent trustee. In addition, ownership by a spouse or family member subjects the participant's desired ultimate disposition of the policy proceeds to risks associated with changes in family relationships or discord among family members. Also, a policy owned by the participant or relative may be exposed to claims of the owner's future creditors, which result can often be avoided by having the policy held in a properly structured Trust. Finally, a Trust can embody a carefully tailored, intricate dispositive scheme that precisely carries out the participant's intentions. Simply allowing the Plan to sell the policy to a relative or other individual owner will not always reflect what a participant really wants to do.

Based upon the arguments presented by the Applicant and the protections already embodied in PTE 92-6, the Department has determined to amend PTE 92-6 to expand the scope of relief for sales of life insurance policies by Plans. Accordingly, effective February 12, 1992,⁵ the proposed amendment to PTE 92-6 would expand the coverage of the exemption to include the sale by a Plan of an individual life insurance or annuity contract to a Trust established by or for the benefit of an individual who is a participant in the Plan and the insured under the policy, or by or for the benefit of one or more relatives (as defined in Section I(2) of PTE 92-6) of the participant.

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

³ See, for example, Treas. Reg. Section 1.401-1(b)(1)(i); and Rev. Rul. 66-143, 1966-1 C.B. 79.

⁴ See, generally, section 2042 of the Code.

⁵ i.e., the date of publication in the **Federal Register** of PTE 92-6.

for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption, if granted, would not extend to transactions prohibited under section 406(b)(3) of the Act or section 4975(c)(1)(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 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 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 exemption. Comments received will be available for public inspection at the above address.

Paperwork Reduction Act

Prohibited Transaction Exemption 92-6 includes a disclosure provision that requires an insured participant to be informed prior to the sale of an applicable life insurance policy. Although this disclosure requirement constitutes a collection of information as defined in the Paperwork Reduction Act of 1995, that collection of information as currently approved under OMB control number 1210-0063 is not substantially or materially altered by the terms of this proposed amendment. Accordingly, no information collection request has been submitted to the Office of Management and Budget in connection with this Notice of Proposed Amendment to PTE 92-6.

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 92-6 as set forth below:

I. Effective January 1, 1975, the restrictions of sections 406(a), 406(b)(1) and 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)(A) through (E) of the Code, shall not apply to the sale of an individual life insurance or annuity contract by an employee benefit plan to: (1) A participant under such plan; (2) a relative of a participant under such plan; (3) an employer any of whose employees are covered by the plan; (4) another employee benefit plan; or (5) effective February 12, 1992, a trust established by or for the benefit of one or more of the persons described in (1) or (2) above;, if:

(a) Such participant is the insured under the contract;

(b) Such relative is a "relative" as defined in section 3(15) of the Act (or a "member of the family" as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and such relative or trust is the beneficiary under the contract;

(c) The contract would, but for the sale, be surrendered by the plan;

(d) With respect to sales of the policy to the employer, a relative of the insured, a trust, or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy and consents to the sale by the plan of such policy to such employer, relative, trust or other plan;

(e) The amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been had it retained the contract, surrendered it, and made any distribution owing to the participant on his vested interest under the plan; and

(f) With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders or highly compensated employees.

II. Effective October 22, 1986, the exemption provided for transactions described in part I is available for plan

participants who are owner-employees (as defined in section 401(c)(3) of the Code) or shareholder-employees as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of enactment of the Subchapter S Revision Act of 1982) if the conditions set forth in part I are met.

Signed at Washington, DC, this 6th day of May, 2002.

Ivan L. Strasfeld,

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

[FR Doc. 02-11661 Filed 5-9-02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D-10845]

Proposed Amendment to Prohibited Transaction Exemption 86-128 (PTE 86-128) for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

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

ACTION: Notice of Proposed Amendment to PTE 86-128.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 86-128. PTE 86-128 is a class exemption that permits certain persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of those plans, provided that specified conditions are met. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts when certain conditions are met. Currently, PTE 86-128 generally is not available to any person (or any affiliate thereof) who is a trustee [other than a nondiscretionary trustee], plan administrator or an employer, any of whose employees are covered by the plan. The proposed amendment, if adopted, would allow a fiduciary that is a plan trustee to engage in a transaction covered by PTE 86-128. The proposed amendment would affect participants and beneficiaries of employee benefit plans, fiduciaries with respect to such plans, and other persons engaging in the described transactions.

DATES: If adopted, the proposed amendment will be effective as of the date the granted amendment is