

Dated: October 4, 2002.

**Robert F. Diegelman,**

*Acting Assistant Attorney General for Administration.*

#### JUSTICE/INS-004

##### SYSTEM NAME:

The Asset Management Information System (AMIS).

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##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 40 U.S.C. 486; (2) 41 CFR part 101; (3) 41 CFR part 128; and (4) 41 CFR part 102.

\* \* \* \* \*

##### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

\* \* \* \* \*

##### RETRIEVABILITY:

\* \* \* \* \*

##### SAFEGUARDS:

INS offices are located in buildings under security guard, and access to the premises is by official identification. All records are stored in space which is locked outside of normal office hours. In addition, paper records with social security numbers are stored in locked cabinets or machines. Access to the automated system is controlled by restricted password for use at remote terminals in secured areas.

\* \* \* \* \*

#### JUSTICE/INS-023

##### SYSTEM NAME:

Law Enforcement Support Center Database.

##### SYSTEM LOCATION:

Immigration and Naturalization Service (INS), Law Enforcement Support Center (LESC), Eastern Regional Office Building, 188 Harvest Lane, Williston, Vermont 05495.

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##### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

These records are stored in electronic format. Electronic records are stored on magnetic or optical media (*i.e.*, computer hard drives, floppy disks, tapes and optical disks).

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##### SYSTEM MANAGER(S) AND ADDRESS:

Director, Law Enforcement Support Center, Eastern Regional Office,

Immigration and Naturalization Service, 188 Harvest Lane, Williston, VT 05495.

\* \* \* \* \*

[FR Doc. 02-26263 Filed 10-16-02; 8:45 am]

BILLING CODE 4410-10-M

#### DEPARTMENT OF LABOR

##### Pension and Welfare Benefits Administration

##### [Application Number D-10845]

##### 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, U.S. Department of Labor.

**ACTION:** Adoption of Amendment to PTE 86-128.

**SUMMARY:** This document amends PTE 86-128, 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. The amendment affects participants and beneficiaries of employee benefit plans, fiduciaries with respect to such plans, and other persons engaging in the described transactions.

**DATES:** The amendment is effective October 17, 2002.

##### FOR FURTHER INFORMATION CONTACT:

Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693-8544, (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:** On May 10, 2002, notice was published in the *Federal Register* (67 FR 31838) of the pendency before the Department of a proposed amendment to PTE 86-128 (51 FR 41686, Nov. 18, 1986). PTE 86-128 provides an exemption from the restrictions of section 406(b)<sup>1</sup> 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 Code, by reason of section 4975(c)(1)(E) or (F) of the Code.

The amendment to PTE 86-128 adopted by this notice was requested in an application, dated October 29, 1999, on behalf of the Securities Industry Association (the SIA), a trade association for securities broker-dealers. The Department proposed the amendment to PTE 86-128 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>

The notice of pendency gave interested persons an opportunity to comment on the proposed amendment or request a hearing. The Department received one comment on the proposed amendment which subsequently was withdrawn. The amendment adopted in this document is identical to the proposed amendment.

##### Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department submitted the proposed revision of the information collection provisions of Prohibited Transaction Exemption 86-128 to the Office of Management and Budget (OMB) at the time of publication of the proposed amendment. OMB approved the revised information collection request on June 20, 2002 under OMB control number 1210-0059. An application for continuing approval will be made before the currently scheduled expiration date of June 30, 2005.

##### Description of the Exemption

PTE 86-128 provides relief from the restrictions of section 406(b) for a plan fiduciary to use its authority to cause a plan to pay a fee to such fiduciary for effectuating or executing securities transactions as agent for the plan. Section I of PTE 86-128 contains definitions and special rules. Notably, for purposes of the class exemption, a "person" is defined to include "the person and affiliates of the person", and an "affiliate" of a "person" is defined, in part, to include: (1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; (2) any officer, director, partner, employee, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or

<sup>1</sup> References to section 406 of ERISA as they appear throughout this amendment should be read to refer as well to the corresponding provisions of section 4975 of the Internal Revenue Code of 1986 (the Code).

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

sister, of the person; and (3) any corporation or partnership of which the person is an officer, director or partner.

Section II describes the transactions covered under PTE 86-128 to include: a plan fiduciary using his or her authority to cause a plan to pay a fee for effecting or executing securities transactions to that person as agent for the plan, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency; a plan fiduciary acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transaction; and the receipt by a plan fiduciary of reasonable compensation for effecting or executing an agency cross transaction to which a plan is a party from one or more other parties to the transaction.

Section III contains conditions designed to protect the interests of plan participants and beneficiaries. These conditions require prior authorization to engage in covered transactions and periodic disclosure of the fiduciary's activities to the authorizing plan fiduciary. Section III(a), prior to this amendment, provided that the person engaging in a covered transaction may not be a trustee (other than a nondiscretionary trustee) or an administrator of the plan, or an employer any of whose employees are covered by the plan. The term "person" is defined to include "affiliates" of the person, thus discretionary trustees, plan administrators, sponsoring employers, and their affiliates are generally precluded from relying on the relief provided by the exemption.

Section IV contains exceptions to several of the conditions in section III. Specifically, section IV provides that the conditions of section III do not apply to covered transactions to the extent such transactions are engaged in on behalf of individual retirement accounts which meet the requirements set forth in 29 CFR 2510.3-2(d) or plans, other than training programs, that do not cover any employees within the meaning of 29 CFR 2510.3-3. In addition, section IV provides that the conditions of section III do not apply in the case of agency cross transactions to the extent that the person effecting or executing the transaction: does not render investment advice to any plan for a fee with respect to the transaction; is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction; and does not have the authority to engage, retain or discharge any person who is, or is proposed to be, a fiduciary regarding any such plan assets. Section IV also provides that a plan trustee, plan administrator, or

sponsoring employer may engage in a covered transaction if he or she returns or credits to the plan all profits earned by that person in connection with the securities transactions associated with the covered transaction. Finally, section IV contains special rules for pooled investment funds.

#### **Description of the Exemption as Amended**

The amendment to PTE 86-128 granted pursuant to this notice enables a discretionary trustee of an ERISA covered plan, or an affiliate of such trustee, to use its fiduciary authority to cause the plan to pay a fee to such trustee for effectuating or executing securities transactions as agent for the plan. In so doing, the trustee (other than a nondiscretionary trustee) must furnish to the authorizing fiduciary of each plan, at least annually, the information specified in section III(i) of the exemption, as amended. In general terms, this section requires the trustee to provide to such fiduciary the aggregate and the average brokerage commissions paid by the plan to brokerage firms affiliated and unaffiliated with the trustee.

In addition, as described in section III(h) of the exemption, a trustee (other than a nondiscretionary trustee) may only engage in a covered transaction on behalf of a plan to the extent such plan has at least \$50 million in total net assets. This section provides further that, in the case of a pooled fund, the \$50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans having total net assets with a value of at least \$50 million.

#### **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. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the

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

(2) This exemption does not extend to transactions prohibited under section 406(a) of the Act;

(3) In accordance with section 408(a) of ERISA and 4975(c)(2) of the Code, the Department makes the following determinations:

(i) the amendment set forth herein is administratively feasible;

(ii) the amendment set forth herein is in the interests of plans and of their participants and beneficiaries; and

(iii) the amendment set forth herein is protective of the rights of participants and beneficiaries of plans;

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

(5) The amendment is 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.

#### **Exemption**

Accordingly, PTE 86-128 is amended as follows under the authority of 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):

(1) Section III(a) is amended to read: "The person engaging in the covered transaction is not an administrator of the plan or an employer any of whose employees are covered by the plan."

(2) A new paragraph (h) is added to section III which reads:

"(h) A trustee [other than a nondiscretionary trustee] may only engage in a covered transaction with a plan that has total net assets with a value of at least \$50 million and in the case of a pooled fund, the \$50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans having total net assets with a value of at least \$50 million.

For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the \$50 million net asset requirement may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust."

(3) A new paragraph (i) is added to section III which reads:

“(i) The trustee (other than a nondiscretionary trustee) engaging in a covered transaction furnishes, at least annually, to the authorizing fiduciary of each plan the following:

(1) the aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms affiliated with the trustee;

(2) the aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms unaffiliated with the trustee;

(3) the average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with the trustee; and

(4) the average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms unaffiliated with the trustee.

For purposes of this paragraph (i), the words “paid by the plan” shall be construed to mean “paid by the pooled fund” when the trustee engages in covered transactions on behalf of a pooled fund in which the plan participates.”

Signed at Washington, DC, this 11th day of October, 2002.

**Ivan L. Strasfeld,**

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

[FR Doc. 02-26424 Filed 10-16-02; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Independent Contractor Register

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This 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 Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection

related to the Independent Contractor Register.

**DATES:** Submit comments on or before December 16, 2000.

**ADDRESSES:** Send comments to David Meyer, Director, Administration and Management, 1100 Wilson Boulevard, Room 2125, Arlington, VA 22209-3939. Commenters are encouraged to send their comments on a computer disk, or via e-mail to [Meyer-David@msha.gov](mailto:Meyer-David@msha.gov), along with an original printed copy. Mr. Meyer can be reached at (202) 693-9802 (voice), or (202) 693-9801 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Jane E. Tarr, Program Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209-3939. Ms. Tarr can be reached at [Tarr\\_Jane@msha.gov](mailto:Tarr_Jane@msha.gov) (Internet E-mail), (202) 693-9824 (voice), or (202) 693-9801 (facsimile).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Independent contractors performing services or construction at mines are subject to the Federal Mine Safety and Health Act of 1977. 30 CFR 45.4(b) requires mine operators to maintain a written summary of information concerning each independent contractor present on the mine site. The information includes the trade name, business address, and telephone number; a brief description and the location on the mine of the work to be performed; MSHA location on the mine of the work to be performed; MSHA identification number, if any; and the contractor's business address of record. This information is required to be provided for inspection and enforcement purposes by the mine operator to any MSHA inspector upon request.

##### II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- \* 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; and

- \* 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 submissions of responses. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA Home Page (<http://www.msha.gov>) and then choosing “Statutory and Regulatory Information” and “Federal Register Documents.”

##### III. Current Actions

The information obtained from the contractors is used by MSHA during inspections to determine proper responsibility for compliance with safety and health standards.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Independent Contractor Register.

*OMB Number:* 1219-0040.

*Affected Public:* Business or other for-profit.

*Cite/Reference/Form/etc:* 30 CFR part 45.

*Total Respondents:* 15,292.

*Frequency:* On occasion.

*Total Responses:* 99,398.

*Average Time Per Response:* 0.87 hours.

*Estimated Total Burden Hours:* 13,250 hours.

*Estimated Total Burden Cost:* \$174,789.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 10th day of October, 2002.

**David L. Meyer,**

*Director, Office of Administration and Management.*

[FR Doc. 02-26384 Filed 10-16-02; 8:45 am]

**BILLING CODE 4510-43-M**