

the charge, if any, shall be no more than \$7.41 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to \$9.25 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

#### C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily subsistence expense related to travel expenses, for which a worker is entitled to reimbursement, is the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.104(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department, in Field Memorandum 42-94, established that the maximum is the meals component of the standard CONUS (continental United States) per diem rate established by the General Services Administration (GSA) and published at 41 CFR Ch. 301. The CONUS meal component is now \$28.00 per day.

Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per quarter of a day. Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of \$14.00. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed at Washington, D.C., this 31st day of January 1997.

John R. Beverly

*Director, U.S. Employment Service.*

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BILLING CODE 4510-30-M

#### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97-11; Application D-09707]

#### Class Exemption for the Receipt of Certain Investment Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained

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

**ACTION:** Grant of class exemption.

**SUMMARY:** This document contains a final class exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The class exemption permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) or, if self-employed, a Keogh Plan is established or maintained, or by members of his or her family, from a broker-dealer, provided that the conditions of the exemption are met. The exemption affects individuals with beneficial interests in such plans who receive such services as well as the broker-dealers who provide such services.

**EFFECTIVE DATE:** February 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Allison Padams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219-8971, (This is not a toll-free number); or Paul D. Mannina, Plan Benefits Security Division, Office of Solicitor, U.S. Department of Labor (202) 219-9141, (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On July 31, 1996, the Department of Labor (the Department) published a notice in the Federal Register (61 FR 39996) of the pendency of a proposed class exemption from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975 (a) and (b), 4975(c)(3) and 408(e)(2) of the Code by reason of section 4975(c)(1) (D), (E) and (F) of the Code. This exemption was requested in an exemption application filed on behalf of the Securities Industry Association (the SIA or the Applicant). The application was filed 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.)<sup>1</sup>

The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. No requests for a public hearing were received by the Department. Two public comments were received by the Department. Upon consideration of the record as a whole, the Department has determined to grant the proposed exemption subject to certain modifications. These modifications and the comments are discussed below.

#### Discussion of the Comments Received

One commenter sought clarification of the language in the preamble to the notice of proposed exemption which addressed the Investment Company Institute's inquiry as to whether the exemption would provide relief for a relationship brokerage program whereby a broker-dealer offers reduced sales charges with respect to the purchase of investment company shares as the size of the purchase increases. In this regard, a broker-dealer would aggregate total purchases of all of a customer's accounts, including IRAs and Keogh Plans. Thus, a broker-dealer would set a schedule of commissions or rates that vary according to the size of the transaction. Specifically, the commenter requests that the Department clarify that the exemption covers "rights of accumulation" programs as described in the National Association of Securities Dealers' Rules of Fair Practice in which a broker dealer takes into account both a customer's present purchases of shares and the aggregate quantity of securities previously purchased by the customer. The Department notes that such programs would be covered by the exemption provided that all the conditions of the exemption are satisfied.

In addition, the commenter requests that the Department reconsider its views stated in footnote 8 of the Preamble relating to "letter of intent programs" in which broker-dealers reduce sales commissions based on the aggregate of a customer's actual purchases and anticipated purchases over a specified period of time, as agreed to by the customer (the Target Amount). The commenter states that the letter of intent is not a binding obligation on the customer to purchase the Target Amount. Rather, if the customer holds

<sup>1</sup> Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

less than the Target Amount in his accounts at the end of the specified period, the sales charge is adjusted upward for the shares purchased during such period, and the customer is required to pay the same sales charge he would have paid if he had not participated in the letter of intent program. For example, an individual purchases shares of a mutual fund under a letter of intent program which requires the individual to purchase a total of \$100,000 of mutual fund shares within 13 months of the initial purchase. The individual makes an initial purchase of \$2,000 for his or her IRA account. In addition, the individual makes a \$3,000 purchase for a non-IRA/Keogh account and pays a reduced sales charge associated with both purchases. An escrow arrangement is established with regard to the \$5,000 in purchases to secure payment of the higher sales charge in the event the investor fails to purchase the intended number of shares during the specified period. During the 13-month period, the individual only purchases another \$5,000 amount for his non-IRA/Keogh account. In accordance with the program, an unreduced sales charge must be reinstated. The broker-dealer would assess each account its prorata share of the reinstated sales charge. Thus, the IRA would only pay 20% of the total amount of money owed for the reinstated sales charge (the IRA purchased \$2,000 of the total \$10,000 purchased or 20%). The commenter represents that under letter of intent programs, IRA and Keogh Plans would be treated as favorably as any other type of account that a broker-dealer includes in the letter of intent program. Based upon the commenter's assertion that the IRA and Keogh Plans only will be assessed that portion of the reinstated sales charges related to the IRA and Keogh Plan purchases, the Department is of the view that letter of intent programs would be covered by the class exemption.

Another commenter urged the Department to modify the definition of an individual retirement account to include simple retirement accounts as described in section 408(p) of the Code. The Small Business Job Protection Act of 1996 (Pub. L. 104-188), effective for taxable years beginning after December 31, 1996, amended section 408 of the Code to permit simple retirement accounts. In this regard, the commenter states that section 408(p)(7) provides that participants of simple employee pensions have the unrestricted authority to transfer their account balances without cost or penalty to simple

retirement accounts sponsored by different financial institutions. The Department finds merit in this comment and has modified section III(b) of the exemption to include simple retirement accounts. The same commenter urges the Department to clarify the definition of account value to include insured investment accounts or insured savings accounts. According to the commenter, such accounts are established in a separate bank and are insured by a federal deposit agency. Broker-dealers establish insured savings accounts whereby the uninvested cash in a clients account is swept into a separate bank account for a client rather than into a money market fund. Clients may select such an account as a sweep vehicle because the assets in the bank account are insured by federal deposit insurance up to the maximum permitted by law. In this regard, the commenter represents that a separate program may be maintained for the broker-dealer's retirement account clients. In response to the comment, the Department has clarified section III(d) to include accounts that are insured by a federal deposit insurance agency and that constitute deposits as that term is defined in section 29 CFR 2550.408(b)-4(c)(3).

#### General Information

The attention of interested persons is directed to the following:

(1) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the IRAs and Keogh Plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans.

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

(3) The exemption is applicable to a transaction only if the conditions specified in the class exemption are met.

#### Exemption

Accordingly, the following exemption is granted under the authority of 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].

#### Section I: Covered Transactions

Effective February 7, 1997, the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1)(D), (E) and (F) of the Code, shall not apply to the receipt of services at reduced or no cost by an individual for whose benefit an IRA or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that each condition of Section II of this exemption is satisfied.

#### Section II: Conditions

(a) The IRA or Keogh Plan whose account value or whose fees are taken into account for purposes of determining eligibility to receive services under the arrangement is established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries.

(b) The services offered under the relationship brokerage arrangement must be of the type that the broker-dealer itself could offer consistent with all applicable federal and state laws regulating broker-dealers.

(c) The services offered under the arrangement are provided by the broker-dealer (or an affiliate of the broker-dealer in the ordinary course of the broker-dealer's business to customers who qualify for reduced or no cost services, but do not maintain IRAs or Keogh Plans with the broker-dealer.

(d) For purposes of determining eligibility to receive services, the arrangement satisfies one of the following:

(i) Eligibility requirements based on the account value of the IRA or Keogh Plan are as favorable as any such requirements based on the value of any other type of account which the broker-dealer includes to determine eligibility; and

(ii) Eligibility requirements based on the amount of fees incurred by the IRA or Keogh Plan are as favorable as any requirements based on the amount of fees incurred by any other type of

account which the broker-dealer includes to determine eligibility.

(e) The combined total of all fees for the provision of services to the IRA or Keogh Plan is not in excess of reasonable compensation within the meaning of section 4975(d)(2) of the Code.

(f) The investment performance of the IRA or Keogh Plan investment is no less favorable than the investment performance of an identical investment(s) that could have been made at the same time by a customer of the broker-dealer who is not eligible for (or who does not receive) reduced or no cost services.

(g) The services offered under the arrangement to the IRA or Keogh Plan customer must be the same as are offered to non-IRA or non-Keogh Plan customers with account values of the same amount or the same amount of fees generated.

#### Section III: Definitions

The following definitions apply to this exemption:

(a) The term "broker-dealer" means a broker-dealer registered under the Securities Exchange Act of 1934.

(b) The term "IRA" means an individual retirement account described in Code section 408(a). For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(c) The term "Keogh Plan" means a pension, profit-sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by Title I of ERISA.

(d) The term "account value" means investments in cash or securities held in the account for which market quotations are readily available. For purposes of this exemption, the term cash shall include savings accounts that are insured by a federal deposit insurance agency that constitute deposits as that term is defined in section 29 CFR 2550.408b-4(c)(3). The term account value shall not include investments in

securities that are offered by the broker-dealer [or its affiliate] exclusively to IRAs and Keogh Plans.

(e) An affiliate of a broker-dealer includes any person directly or indirectly controlling, controlled by, or under common control with the broker-dealer. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term "members of his or her family" refers to beneficiaries of the individual for whose benefit the IRA or Keogh Plan is established or maintained, who would be members of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or spouse of a brother or sister.

(g) The term "service" includes incidental products of a de minimis value which are directly related to the provision of services covered by the exemption.

(h) The term "fees" means commissions and other fees received by the broker-dealer from the IRA or Keogh Plan for the provision of services, including, but not limited to, brokerage commissions, investment management fees, custodial fees, and administrative fees.

Signed at Washington, DC, this 31st day of January 1997.

Alan D. Lebowitz,

*Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 97-3030 Filed 2-6-97; 8:45 am]

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#### Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held March 6, 1997, in Room S2508, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will begin at 1:00 p.m. and end at approximately 3:30 p.m., is to consider the items listed below and to invite public comment on any aspect of the administration of ERISA.

- I. Welcome and Introduction of New Council Members
- II. Assistant Secretary's Report
  - A. PWBA Priorities for 1997
  - B. Announcement of Council Chair and Vice Chair

- III. Introduction of PWBA Senior Staff and Swearing In of New Members
- IV. Report of Advisory Council Working Groups (1996 Term)
- V. Determination of Council Working Groups for 1997
- VI. Statements from the General Public
- VII. Adjourn

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before February 27, 1997 to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to ten minutes, but extended statements may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by February 27, at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before February 27, 1997.

Signed at Washington, DC, this 3rd day of February, 1997.

Olena Berg,

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 97-3094 Filed 2-6-97; 8:45 am]

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#### NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-282 and 50-306]

#### Northern States Power Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-42 and DPR-60 issued to Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2, located in Goodhue County, Minnesota.