

reflect the desire of the Local to use the exemption application process as a means to open pension negotiations with the Employer. As the exemption application by the Employer does not request or result in any amendment to the Plan or any change in the benefits provided to participants under the Plan, it is the position of the applicant that the requested exemption should not constitute a trigger for union benefit negotiations.

Further, the applicant suggests that the genesis of the request for denial of the exemption application included in the comment letter appears to arise from some disappointment or ill will from prior negotiations involving issues unrelated to the exemption application. In the opinion of the applicant, such feelings as to unrelated matters are irrelevant to and should not be the catalyst for denial of the requested exemption.

In response to the comment requesting a hearing be scheduled if union negotiations break down, the applicant maintains that the exemption application does not affect the benefits of the participants under the Plan and should not involve union negotiations. Further, the applicant points out that the comment letter does not include any facts supporting a conclusion that any participant would be adversely affected by the grant of the exemption requested. In the opinion of the applicant, a hearing should not be required, as all factual data and documents have already been provided to the Department of Labor, and any issues discussed in the comment letter can be fully explored, if deemed necessary by the Department of Labor, through the submission of evidence in written form.

The Department, after reviewing the concerns of the commentators, does not believe that there are material issues relating to the subject exemption that were raised by the commentators during the comment period which would require the convening of a hearing. Accordingly, the Department has determined not to delay consideration of the final exemption by holding a hearing on application D-11194.

After giving full consideration to the entire record, including the written comment from the commentators, the applicant's response to such comments, and the applicant's own comment, the Department has decided to grant the exemption, as described and amended, above. In this regard, the comment letter from the commentators, the applicant's response thereto, and the comment letter from the applicant which were submitted to the Department have been included as part of the public record of

the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on September 5, 2003, at 68 FR 52796.

#### FOR FURTHER INFORMATION CONTACT:

Angelena C. Le Blanc, of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

#### 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 the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other 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 participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of November, 2003.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
Department of Labor.*

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## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

#### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be