

DEPARTMENT OF LABOR**Employee Benefits Security Administration**

[Prohibited Transaction Exemption 2005–14; Exemption Application No. D–11175 et al.]

Grant of Individual Exemptions; Milan Uremovich, D.D.S., P.C. Profit Sharing Plan and Trust (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Milan Uremovich, D.D.S., P.C. Profit Sharing Plan and Trust (the Plan) Located in Arvada, CO [Prohibited Transaction Exemption 2005–14; Exemption Application No. D–11175] Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and 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, shall not apply to the leasing (the New Lease) by the individual account in the Plan of Dr. Milan Uremovich (the Account), of certain office space (the Office Space) to Milan Uremovich, D.D.S., P.C., (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The terms and conditions of the New Lease are at least as favorable to the Account as those the Account could obtain in a comparable arm's length transaction with unrelated parties.

(b) The fair market rental value of the Office Space leased to the Employer is determined by a qualified, independent appraiser.

(c) The rent charged by the Account under the New Lease and for each renewal term is, at all times, not less than the fair market rental value of the Office Space, as determined by a qualified, independent appraiser. The rental payments under the New Lease are adjusted once every five years after the initial term and after each renewal term by the qualified, independent appraiser to ensure that the New Lease payments are not greater than or less than the fair market rental value of the leased space. In no event may the rent be adjusted below the rental amount paid for the preceding term of such lease.

(d) The fair market value of the Office Space represents, at all times, no more than 25 percent of the total assets of the Account.

(e) The Account does not pay any real estate fees, commissions, or other expenses with respect to the New Lease.

(f) The New Lease is a triple net lease under which the Employer, as lessee, pays, in addition to the base rent, all normal operating expenses associated with the Office Space, including real estate taxes, insurance, maintenance, repairs and utilities.

(g) Dr. Uremovich is the only participant in the Plan whose Account is affected by the New Lease.

(h) Within 90 days of the publication, in the **Federal Register**, of the notice granting this exemption, the Employer files a Form 5330 with the Internal Revenue Service and pays all applicable excise taxes under section 4975(a) of the Code that are attributed to the past purchase of the Building by Dr. Uremovich's individual account in the Milan Uremovich, D.D.S., P.C. Profit Sharing Plan (the Profit Sharing Plan), a predecessor to the current Plan, and the leasing of Office Space in the Building by the Profit Sharing Plan Account and the Account to Dr. Uremovich.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 29, 2005 at 70 FR 37434.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

Dakotas and Western Minnesota Electrical Workers Apprenticeship Plan (the Plan) Located in Fargo, ND [Prohibited Transaction Exemption No. 2005–15; Exemption Application No: L–11316]

Exemption

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the lease (the Lease) of a portion of a parcel of improved real property (the Premises) by the Plan from the Dakotas Chapter of the National Electrical Contractors Association (the Dakotas NECA), a party in interest with respect to the Plan; provided that, at the time the transaction is entered into, the following conditions are satisfied:

(a) An independent, qualified fiduciary (the I/F), acting on behalf of the Plan, determines prior to entering into the transaction that the transaction is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of the Plan;

(b) Before the Plan enters into the Lease of the Premises, the I/F reviews the transaction, negotiates the terms of the transaction to ensure that such terms are at least as favorable to the Plan as an arm's length transaction with an unrelated party, and determines whether or not to approve the transaction, in accordance with the fiduciary provisions of the Act;

(c) The I/F monitors compliance with the terms and conditions of this

exemption, as described herein, and ensures that such terms and conditions are at all times satisfied;

(d) Throughout the duration of the Lease of the Premises, the I/F monitors compliance with the terms of the Lease of the Premises and takes any and all steps necessary to ensure that the Plan is protected, including, but not limited to, notifying Dakotas NECA of the Plan's intention to extend the Lease of the Premises at the conclusion of the initial five (5) year term of the Lease;

(e) The rent paid by the Plan for the Premises under the terms of the Lease and under the terms of any subsequent extension of the Lease is at no time greater than the fair market rental value of the Premises, as determined by an independent, qualified appraiser retained by the Board of Trustees of the Plan (the Trustees);

(f) The Plan pays no rent for the Premises, any remodeling or maintenance costs, any taxes, insurance, operating expenses or other costs, expenses, or charges for the Premises for the period from the date of the Plan's first occupancy of the Premises to the date the final exemption is published in the **Federal Register**. Nothing in this condition (f) shall preclude the payment by the Plan of rent plus its proportionate share of the cost of taxes, maintenance, and insurance on the Premises after the final exemption is published in the **Federal Register** and the Lease of the Premises is executed;

(g) Under the provisions of the Lease, the transaction is on terms and at all times remains on terms that are at least as favorable to the Plan as those that would have been negotiated under similar circumstances at arm's length with an unrelated third party;

(h) The transaction is appropriate and helpful in carrying out the purposes for which the Plan is established or maintained;

(i) The Trustees maintain, or cause to be maintained within the United States for a period of six (6) years in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described, below, in paragraph (j)(1) of this exemption to determine whether the conditions of this exemption have been met; except that—

(1) If the records necessary to enable the persons described, below, in paragraph (j)(1) of this exemption to determine whether the conditions of this exemption have been met are lost or destroyed, due to circumstances beyond the control of the Trustees, then no prohibited transaction will be considered to have occurred solely on

the basis of the unavailability of those records; and

(2) No party in interest, other than the Trustees shall be subject to the civil penalty that 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 the records are not maintained, or are not available for examination as required by paragraph (i) of this exemption; and

(j)(1) Except as provided, below, in paragraph (j)(2) of this exemption and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) of this exemption are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or any other applicable federal or state regulatory agency;

(B) Any fiduciary of the Plan, or any duly authorized representative of such fiduciary;

(C) Any contributing employer to the Plan and any employee organization whose members are covered by the Plan, or any duly authorized employee or representative of these entities; or

(D) Any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described, above, in paragraph (j)(1)(B)–(D) of this exemption are authorized to examine trade secrets or commercial or financial information that is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 12, 2005, at 70 FR 47252.

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 31st day of October, 2005.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Foreign Labor Certification Quarterly Activity Report

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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)(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 Employment and Training