

Employment and Training Administration EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS

Notice of Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75, published January 29, 1975 (40 FR 4393). In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.
2. Employment trends in the same industry in the local area.
3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.
4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).
5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit

such information in writing within two weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D St. NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 22nd day of March, 1976.

BEN BURDETSKY,
Deputy Assistant Secretary for
Employment and Training.

Applications received during the week ending March 19, 1976

Nome of applicant	Location of enterprise	Principal product or activity
Port Clyde Foods, Inc.	Rockland, Stonington, and Yarmouth, Maine	Sardine canning, warehousing, and filleting of herring.
Edward C. Jordan Co., Inc.	Falmouth, Maine	Engineering, architecture, surveying.
Gloucester Building Supply, Inc.	Gloucester, N.J.	Selling of lumber and building supplies.
Halecrest Co.	Rockaway Township, N.J.	Mining of iron ore concentrates.
American National Rubber Co.	Ceredo, W. Va.	Manufacture and processing of industrial sponge rubber products.
Lewis Meats, Inc.	Swainsboro, Ga.	Processing of meats.
Farmers Service Gin Co.	Moultrie, Ga.	Purchase, sale, and transportation of fertilizer.
ASPRO, Inc.	Alcorn County, Miss.	Manufacture and sale of steel pulleys.
Robert D. Coatney	Carlisle, Ky.	Sales of ice; processing of meat.
Jerry Chasteen Chevrolet, Inc.	Bennettsville, S.C.	Automobile sales and service.
Metalex, Inc.	Swansea, S.C.	Metal electroplating.
R. & F. Coal Co. (tenant to Cadiz)	Cadiz, Ohio	Mining and sales of coal.
Phillips Metal Co., Inc.	Coldwater, Mich.	Processing of aluminum scrap.
Colonial Container Co. (tenant to City of Green Lake)	Green Lake, Wis.	Manufacturing of corrugated containers.
Souvenir Sales Co.	Round Rock, Tex.	Silk screen manufacturing.
Brown Oil Co.	Chadron, Nebr.	Sale of petroleum products.
The Egging Co.	Gurley, Nebr.	Manufacture of sugar beet harvesting equipment.
Roger L. Smith	Benlah, N. Dak.	Retail grocery sales.
Crown Redwood Co.	Fortuna, Calif.	Manufacture of furniture.
Frontier Machinery, Inc.	Walla Walla, Wash.	Manufacture of circular irrigation systems.

[FR Doc.76-8539 Filed 3-25-76; 8:45 am]

Labor-Management Services Administration

[Application No. L-308]

EMPLOYEE BENEFIT PLANS

Application for Exemption for a Transaction Involving the Operating Engineers Journeyman and Apprentice Training Trust and Dicco, Inc.

MARCH 23, 1976.

Notice is hereby given that the Department of Labor (the Department) has under consideration an application for exemption from the restrictions of section 406(a)(1)(A), (C) and (D) of the Employee Retirement Income Security Act of 1974 (the Act) filed by the trustees of the Operating Engineers Journeyman and Apprentice Trust (the Plan) for the use by the Plan, as a training and storage site, of a portion of the property owned by Dicco, Inc. ("Dicco"), a contributing employer. The application was filed pursuant to section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Summary of Representations. The application contains representations with regard to the requested exemption, which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the trustees.

Dicco, a general engineering contractor located in Bakersfield, California, has offered to permit the trustees of the Plan to use a portion of Dicco's 50-acre yard located on James Road approximately ten miles from downtown Bakersfield as a training site for storing engineering equipment and training apprentices and

journeymen in the proper techniques of operating such equipment. The yard contains aggregate pits where apprentices and journeymen would operate Plan equipment to obtain experience in dirt moving, compaction, leveling and excavation.

Dicco will not receive any compensation from the trustees of the Plan for the use of the property. However, the trustees will agree to protect, defend and save harmless Dicco from any and all claims and causes of action which may arise from the use of the property by the trustees. Dicco may benefit from the transaction through the availability of better trained workmen and from the activities of journeymen and apprentices during training at the site. Such benefit from the training activities is expected to be slight, if any, because such training normally involves digging, filling, compacting and re-digging at approximately the same location.

The terms of the transaction are set forth in a written agreement between the Plan and Dicco which will be executed upon the granting of the requested exemption.

The Plan has not had a training site in the Bakersfield, California, area. Since Bakersfield is approximately 90 miles from Los Angeles, California, the absence of a training site in Bakersfield has deprived journeymen and apprentices in that area of the opportunity to participate in training activities of the Plan, which are conducted in Los Angeles County. The purchase or lease of a training site in Bakersfield previously has not been economically feasible because of the relatively few participants in the Bakersfield area.

Notice of the requested exemption as published in the *FEDERAL REGISTER* will be given by publication in the *International Union of Operating Engineers Local Union No. 12* newspaper, *Engineers News-Record*, which is published monthly on approximately the 15th day of the month and distributed to all members of the union. Copies of this notice of the requested exemption also will be mailed to the employer associations which are signatories to the trust agreement creating the Plan.

Requested Exemption. Based upon the representations set forth in the application, it has been requested that an exemption be granted under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) so that the restrictions of section 406(a)(1) (A), (C) and (D) of the Act shall not apply to the use by the Plan, pursuant to the written agreement appended to the application, of the above-described property owned by Dicco as a training site for storing equipment and training apprentices and journeymen to operate such equipment.

General Information. The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary with respect to a plan to which the exemption is applicable from certain other provisions of the Act, including any prohibited transaction 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 plan's participants and beneficiaries and in a prudent fashion in accordance with subsection (a)(1)(B) of section 404 of the Act;

(2) The requested exemption contained herein does not extend to transactions prohibited under sections 406(a)(1)(B) and (E), 406(a)(2) and 406(b) of the Act;

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plan; and

(4) The requested exemption set forth herein is supplemental to, and not in derogation of, any other provisions of the Act, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is the subject of an exemption is not dispositive of whether the transaction would have been a prohibited transaction in the absence of such exemption or, though it would have been a prohibited transaction, is exempt

by operation of a statutory exemption or a transitional rule.

All interested persons are invited to submit written comments on the requested exemption contained herein. All written comments (preferably six copies) should be addressed to the Office of Employee Benefits Security, Labor-Management Services Administration, Room N-4716, U.S. Department of Labor, Washington, D.C. 20216, Attention: Application No. L-308.

In order to receive consideration, such comments must be received by the Department on or before May 7, 1976. The application for exemption referred to herein and such comments will be available for public inspection at the Public Document Room, Office of Employee Benefits Security, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

Signed at Washington, D.C., this 23rd day of March 1976.

JAMES D. HUTCHINSON,
Administrator of Pension and
Welfare Benefit Programs,
U.S. Department of Labor.

[FR Doc. 76-8747 Filed 3-25-76; 8:45 am]

[Prohibited Transaction Exemption 76-1]

EMPLOYEE BENEFIT PLANS

Class Exemptions From Prohibitions Respecting Certain Transactions in Which Multiemployer and Multiple Employer Plans Are Involved

On June 2, 1975, notice was published in the *FEDERAL REGISTER* (40 FR 23798) that the Department of Labor (the Department) and the Internal Revenue Service (the Service) had under consideration proposals to exempt certain classes of transactions in which multiemployer plans (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (the Act) and section 414(f) of the Internal Revenue Code of 1954 (the Code)) are involved from the restrictions of sections 406(a) and 407(a) 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 (D) of the Code, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code. The exemptions were proposed in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722, and all interested persons were invited to submit comments on the proposed exemptions. The Department and the Service have given careful consideration to the comments which were received and have determined to grant the proposed exemptions, as modified, as set forth below.

As indicated in the notice of June 2, 1975, the Department and the Service have been informed that multiemployer plans engage in numerous transactions which are established and customary in

nature, widespread in usage, and reasonable in their terms, but which may be prohibited transactions within the meaning of sections 406 and 407(a) of the Act and section 4975(c)(1) of the Code.

There have been identified to the Department and the Service several classes of such transactions. Three of these classes of transactions are the subject of the class exemptions set forth herein.

The Department and the Service have determined that class exemptions are necessary in the case of multiemployer plans and other collectively bargained multiple employer plans because such plans frequently engage in operationally similar transactions having common characteristics which are distinctive for multiemployer and other multiple employer plans generally, notwithstanding that a variety of industries with a multiplicity of parties and differing relationships are involved. Class exemptions are also justifiable for classes of transactions engaged in by multiemployer plans and other collectively bargained multiple employer plans because such plans are jointly administered within the meaning of section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)). For purposes of these class exemptions and except as otherwise specified below, multiemployer plans and multiple employer plans will hereinafter be collectively referred to as multiple employer plans, as that term is defined in Sec. II of the exemption relating to delinquent employer contributions, Sec. III of the exemption relating to construction loans, and Sec. III of the exemption relating to office space, administrative services and goods.

General Information. The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act 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 the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interests of the plan's participants and beneficiaries and in a prudent fashion in accordance with subsection (a)(1)(B) of section 404 of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The exemptions contained herein do not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code.

(3) The exemptions set forth herein are supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is the subject of an exemption is not dispositive of whether the transaction would have been a prohibited transaction in the absence of such exemption or, though it would have been a prohibited transaction, is exempt by operation of a statutory exemption or a transitional rule.

(4) Each class exemption contained herein is applicable to a particular transaction only if the transaction satisfies the conditions specified for the class in which it falls.

(5) The three class exemptions set forth herein are available by their terms not only for multiemployer plans, but also for other multiple employer plans which would be multiemployer plans under section 3(37) of the Act and section 414(f) of the Code, except that the amount of contributions made under the plan for a plan year by each employer making such contributions is not less than 50 percent of the aggregate amount of contributions made under the plan for that year by all employers making such contribution (as required by section 3(37)(A)(iii) of the Act and section 414(f)(1)(C) of the Code), or benefits are not payable with respect to each participant without regard to the cessation of contributions by the employer who had employed the participant (as required by section 3(37)(A)(iv) of the Act and section 414(f)(1)(D) of the Code). Thus, for purposes of these class exemptions, a plan will be deemed to be a multiple employer plan so long as more than one employer is required to contribute to the plan (section 3(37)(A)(i) of the Act and section 414(f)(1)(A) of the Code) and the plan is maintained pursuant to one or more collective-bargaining agreements between an employee organization or employee representatives and more than one employer (section 3(37)(A)(ii) of the Act and section 414(f)(1)(B) of the Code). This modification is based on information brought to the attention of the Department and the Service in several written comments that such plans engage in transactions which are similar to those engaged in by multiemployer plans and should be treated in a similar fashion.

(6) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, including the written comments submitted in response to the notice of June 2, 1975, the Department and the Service make the following findings and determinations:

(i) The class exemptions set forth herein are administratively feasible;

(ii) They are in the interests of plans and of their participants and beneficiaries; and

(iii) They are protective of the rights of participants and beneficiaries of plans.

A. Delinquent employer contributions. An employer participating in a multiple

employer plan (a "participating employer") is generally obligated under the terms of the plan or of a collective bargaining agreement to make periodic contributions to the plan. Multiple employer plans are often confronted with the problem of delinquency in participating employer contributions since such plans, by their very nature, have a multiplicity of participating employers of varying size and financial strength, and at times one or more participating employers may be delinquent in making such contributions. In the course of their collection efforts, multiple employer plans frequently delay or extend the time for payment of contributions pursuant to understandings, arrangements, or agreements in circumstances where it appears that collection of the full amount due the plan would be jeopardized were the plan to attempt to force immediate full payment.

In the notice of June 2, 1975, the Department and the Service stated that a question had been raised as to the extent to which such delinquencies, delays, or extensions constitute prohibited transactions under sections 406 and 407(a) of the Act and section 4975(c)(1) of the Code and that the class exemption relating to delinquent employer contributions was proposed in order to eliminate the uncertainty that may exist in this area and the adverse effects to plans and their participants and beneficiaries that may be caused by such uncertainty.

After considering the comments which have been submitted, it is the view of the Department and the Service that generally neither the failure of a participating employer in a multiple employer plan to make a contribution to the plan when the contribution is due nor the failure of the plan to collect such a delinquent contribution constitutes a prohibited transaction under section 406 and 407(a) of the Act and section 4975(c)(1) of the Code. However, if the plan is not making systematic, reasonable and diligent efforts to collect delinquent contributions, or the failure to collect is the result of an arrangement, agreement or understanding, express or implied, between the plan and the delinquent employer, such failure to collect a delinquent employer contribution may be deemed to be a prohibited transaction.

Nevertheless, because participating employers have little, if any, control over the contribution collection efforts made by plans, paragraph (b) of the exemption now provides that participating employers shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code for prohibited transactions involving delinquent employer contributions, except in the case of arrangements, agreements or understandings which are clearly unreasonable. Thus, with this limited exception only plan fiduciaries will be liable for prohibited transactions involving delinquent employer contributions when such transactions are not exempt under the class exemption provided herein.

The written comments which have been submitted indicate that many multiple employer plans have adopted written procedures for the orderly collection of delinquent employer contributions which involve reasonable, diligent and systematic methods for the review of employer contribution accounts by means of, for example, reports and questionnaires from employers and field audits, and which involve reasonable, diligent and systematic methods for the collection of delinquent employer contributions by means of, for example, the automatic, contractual imposition on delinquent employers of charges for liquidated damages, interest, or plan expenses for collection of delinquent contributions, the placing of employer contributions in escrow accounts prior to the date such contributions are due, the purchase of bonds by employers to guarantee the payment of contributions to a plan, or the institution of various forms of appropriate legal action.

Plans which do not establish and implement collection procedures which are reasonable, diligent and systematic may be found to be engaging in prohibited transactions under sections 406 and 407(a) of the Act and section 4975(c)(1) of the Code in failing to collect delinquent contributions.

Under certain circumstances multiple employer plans may find it necessary and in the interests of the plan and of its participants and beneficiaries to permit employers in appropriate situations to pay contributions after the date on which such contributions are due, often in periodic installments, as the only means by which it can reasonably be expected that the plan ultimately will receive payments of such contributions, in light of the poor financial condition of the delinquent employer and the expenses that the plan would incur in continuing to attempt to collect the employer's entire contribution immediately.

In addition, many of the letters of comment have asserted that based on the poor financial condition of some delinquent employers and the expenses of collecting delinquent contributions from such employers, it is often found to be in the interests of multiple employer plans and of their participants and beneficiaries for the plan to discontinue collection efforts with respect to such employers and either to enter into an agreement for the payment of less than the full amount of the contribution due in satisfaction of the entire amount of the employer's contribution or to write off such employer's delinquent contribution as uncollectable.

Such arrangements, agreements or understandings whereby a multiple employer plan agrees to the late or delayed payment of employer contributions, or payment of less than the full amount of such contribution, or those situations in which a plan writes off an employer contribution as uncollectable, may constitute prohibited transactions under sections 406 and 407(a) of the Act and section 4975(c)(1) of the Code.

Nevertheless, based on the information furnished and the representations made

in the written comments, the Department and the Service find that it is administratively feasible, in the interests of plans and of their participants and beneficiaries, and protective of the rights of participants and beneficiaries of plans to grant the exemption set forth in section I below with respect to such classes of transactions.

As noted in paragraph (5) of the General Information section of the Preamble, this class exemption covers not only multiemployer plans, but also other multiple employer plans. In this regard, an employer association which is the sponsor of an employee benefit plan which is not collectively bargained, but which has a significant number of unaffiliated employers contributing to the plan, submitted a letter of comment stating that its plan has many of the same problems regarding delinquent employer contributions that are encountered by multiemployer plans and, therefore, that the class exemption for transactions involving delinquent employer contributions should be made applicable to plans which are not collectively bargained. However, because plans which are not collectively bargained are not jointly administered within the meaning of section 302(c)(5) of the Labor Management Relations Act, 1947, the circumstances and safeguards involved in the collection of delinquent employer contributions by such plans may be different from those involved in collectively bargained, jointly administered multiple employer plans. The letter of comment did not contain sufficient information regarding this question and, therefore, the Department and the Service are not able at this time to grant a class exemption covering plans which are not collectively bargained. The agencies are, however, prepared to consider applications for an exemption for transactions involving the collection of delinquent employer contributions by employee benefit plans which are not collectively bargained.

It should be noted that even if a transaction is not in violation of, or is exempt from, the prohibited transaction provisions, any failure to make a contribution may result in a failure to meet the minimum funding standards contained in Part 3 of Title I of the Act and, where relevant, section 412 of the Code, and may subject the delinquent employer to a tax under section 4971 of the Code. Nothing in this class exemption shall be construed to exempt participating employers from the funding requirements of the Act or the Code.

Exemption. Accordingly, the following exemption is granted 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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 CB, 722:

Sec. I. Effective January 1, 1975—

(a) The restrictions of sections 406(a) and 407(a) of the Act shall not apply to:

(1) Any arrangement, agreement or understanding between a multiple employer plan and any employer any of whose employees are covered by such

plan, whereby the time is extended for the making of a contribution by such employer to such plan, if the following conditions are met:

(i) Prior to entering into such arrangement, agreement or understanding, the plan has made, or has caused to be made, such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect such contribution;

(ii) The terms of such arrangement, agreement or understanding are set forth in writing and are reasonable under the circumstances based on the likelihood of collecting such contribution or the approximate expenses that would be incurred if the plan continued to attempt to collect such contribution through means other than such arrangement, agreement or understanding; and

(iii) Such arrangement, agreement or understanding is entered into or renewed by the plan in connection with the collection of such contribution and for the exclusive purpose of facilitating the collection of such contribution.

(2) Any arrangement, agreement or understanding between a multiple employer plan and any employer any of whose employees are covered by such plan, whereby the plan agrees to accept less than the entire amount of a contribution owed by such employer in satisfaction of such employer's obligation to pay the entire amount of such contribution, if the following conditions are met:

(i) Prior to entering into such arrangement, agreement or understanding, the plan has made, or has caused to be made, such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect such contribution in its entirety; and

(ii) The terms of such arrangement, agreement or understanding are set forth in writing and are reasonable under the circumstances based on the likelihood of collecting such contribution or the approximate expenses that would be incurred if the plan continued to attempt to collect such contribution through means other than such arrangement, agreement or understanding.

(3) A determination by a multiple employer plan to consider a contribution due the plan from any employer any of whose employees are covered by the plan as uncollectable, in whole or in part, and to terminate efforts to collect such contribution, if the following conditions are met:

(i) Prior to making such determination, the plan has made, or has caused to be made, such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect such contribution or any part thereof; and

(ii) Such determination is set forth in writing and is reasonable and appropriate based on the likelihood of collecting such contribution or the approximate expenses that would be incurred if the plan continued to attempt to collect such contribution or any part thereof.

(b) If an employer any of whose employees are covered by a multiple em-

ployer plan fails to make a required contribution to such plan when such contribution is due, or enters into an arrangement, agreement or understanding with such plan described in paragraph (a)(1) or (a)(2) with respect to the payment of such contribution, or if the plan makes a determination described in paragraph (a)(3), such employer shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, except in the case of an arrangement, agreement or understanding described in paragraph (a)(1) or (a)(2), where the terms thereof are clearly unreasonable under the circumstances based on the likelihood of collecting such contribution or the approximate expenses that would be incurred if the plan continued to attempt to collect such contribution through means other than such arrangement, agreement or understanding.

Sec. II. Definitions. For purposes of section I above, the term "multiple employer plan" shall mean an employee benefit plan which is a multiemployer plan within the meaning of section 3(37) of the Act and section 414(f) of the Code, or a plan which meets all of the requirements of such sections other than the requirements of either or both (a) section 3(37)(A)(iii) of the Act and section 414(f)(1)(C) of the Code, and (b) section 3(37)(A)(iv) of the Act and section 414(f)(1)(D) of the Code.

B. Construction loans. Multiple employer plans, including those covering employees in the building and construction trades, have traditionally invested a percentage of their assets in construction loans as an appropriate investment in the interests of such plans and of their participants and beneficiaries and as a means of providing work opportunities for plan participants. Several written comments urged that the class exemption for such loans be extended to include permanent mortgage loans by a multiple employer plan to employers any of whose employees are covered by the plan ("participating employers"). However, the information that was provided to the Department and the Service as the basis for the proposal of the class exemption for construction loans on June 2, 1975, and the letters of comment submitted with respect to the proposal did not provide a sufficient basis for the granting of a class exemption for permanent mortgage loans. Accordingly, the exemption as proposed, and as granted herein, relates only to construction loans. It does not apply to permanent mortgage loans between multiple employer plans and participating employers, or to commitments from such plans to participating employers to provide mortgage loans to persons who purchase improved real property from participating employers. As indicated in the notice of June 2, 1975, however, the Department and the Service are prepared to consider any applications which may hereafter be made to the agencies for exemptions with respect to other classes

of transactions involving multiple employer plans.

A question was raised in several letters of comment with respect to whether a loan by a multiple employer plan to an owner of real property who is not a party in interest or disqualified person with respect to such plan would constitute a prohibited transaction under section 406(a) of the Act and section 4975(c)(1) (A) through (D) of the Code if the loan is for the purpose of enabling such property owner to make construction improvements on such real property and the property owner contracts with an employer participating in the plan to make such construction improvements. It is the view of the Department and the Service, based on the principles enunciated in ERISA IB 75-2 and TIR-1346 (February 6, 1975), that such loan would not constitute a prohibited transaction under section 406(a) of the Act and section 4975(c)(1) (A) through (D) of the Code; although, of course, such a loan may give rise to a prohibited transaction if, for example, the loan is made in the context of an arrangement for a specific participating employer to furnish a portion of the construction, and such employer has a controlling influence over the plan's decision to make the loan.

One of the conditions contained in the proposed exemption was that the decision by a multiple employer plan to make a construction loan to a participating employer must be made by a bank or insurance company which meets the requirements of section 3(38) of the Act, pursuant to its sole discretionary authority or control with respect to the management or disposition of the plan assets used to make such loan, in accordance with the standards established by such institution for making similar loans from its own funds, subject only to broad investment guidelines, if any, established by the trustees of the plan. It was suggested in the written comments that this condition should be expanded to permit the internal investment committee of a plan to make such decisions for the plan, and to permit savings and loan associations subject to regulation by the Federal Home Loan Bank Board to make such decisions for a plan, under similar circumstances as those set forth with respect to banks and insurance companies. As regards the suggestion with respect to internal plan investment committees, the letters of comment and the information made available to the Department and the Service have not furnished sufficient supportive data to permit the Department and the Service to grant an expanded exemption, particularly with respect to the safeguards which should be imposed for the inclusion of internal investment committees in order to protect the rights and interests of plans and plan participants and beneficiaries. Accordingly, the exemption has not been modified to extend decision-making authority to internal plan investment committees. As noted above, however, the Department and the Service are prepared to consider any application which may hereafter be made to

the agencies for exemptions with respect to classes of transactions involving multiple employer plans other than those transactions covered by the class exemptions granted herein.

With regard to federally chartered savings and loan associations, which are subject to extensive regulation by the Federal Home Loan Bank Board with respect to their real estate lending practices (see 12 CFR Part 545), the exemption has been extended to permit federal savings and loan associations to make plan decisions for construction loans to participating employers under conditions similar to those imposed on banks and insurance companies.

The retroactive exemption set forth in section II below is effective with respect to all construction loans made by multiple employer plans to participating employers for which a multiple employer plan was committed under a binding contract in effect prior to June 3, 1975. The Department and the Service note that transactions which do not meet the conditions of this class exemption may nevertheless meet the conditions of sections 414(c)(1) and 2003(c)(2) (A) of the Act which provide an exemption from the prohibited transaction provisions of sections 406 and 407(a) of the Act and section 4975 of the Code until June 30, 1984 for a loan of money or other extension of credit between a plan and a party in interest or disqualified person under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of the Code or the corresponding provisions of prior law). Other modifications intended to clarify the terms and conditions of the exemption have also been made.

In addition, many of the comments urged that the proposed exemption be extended to loans other than those which are related to construction. The Department and the Service do not consider it appropriate to extend the scope of this exemption to such loans on the basis of the comments received; however, they will consider applications for exemptions for loans common to other industries upon receipt of such applications.

Exemption. Accordingly, the following exemption is granted 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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722:

Sec. I. Prospective. Effective June 3, 1975, the restrictions of sections 406(a) and 407(a) 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 (D) of the Code, shall not apply to a loan made by a multiple employer plan to a participating employer, pro-

vided that the following conditions are met:

(a) The loan is a construction loan.
(b) The decision to make the loan is made on behalf of the plan by a bank or insurance company which meets the requirements of section 3(38) of the Act, or by a savings and loan association subject to regulation by the Federal Home Loan Bank Board, pursuant to such bank's, insurance company's, or savings and loan association's sole discretionary authority or control with respect to the management or disposition of the plan assets used to make such loan (as defined in section III(b)).

(c) Neither the plan, the participating employer to whom the loan is made, nor the employee organization any of whose members are covered by the plan has the power to exercise a controlling influence over the management or policies of such bank, insurance company or savings and loan association.

(d) The bank, insurance company, or savings and loan association commonly makes construction loans on similar terms and conditions from its own funds.

(e) Such loan satisfies the qualifications established by the bank, insurance company, or savings and loan association for making such loan from its own funds.

(f) Before the loan is made, the participating employer to whom the loan is made and the plan have received a written commitment running to both the plan as construction lender and such employer for permanent financing from a person other than the plan to enable full repayment of such loan upon completion of construction.

(g) Immediately after the making of such loan, (1) the aggregate amount of investments (including loans) of the plan in such participating employer does not exceed 10 percent of the fair market value of the assets of the plan, and (2) the aggregate amount of investments of the plan in loans to all participating employers does not exceed 35 percent of the fair market value of the assets of the plan.

(h) The plan maintains or causes to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (i) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period, and (2) such employer shall not be subject to the civil penalty which 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 such records are not maintained, or are not available for examination as required by paragraph (i) below.

(i) Notwithstanding anything to the contrary in subsections (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (h) are unconditionally available at their customary

location for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by the plan.

Sec. III. Retroactive. Effective from January 1, 1975, the restrictions of section 406(a) and 407(a) 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 (D) of the Code, shall not apply to a loan made by a multiple employer plan to a participating employer, provided that the following conditions are met:

(a) Such loan was made on or before June 2, 1975, or was made after such date pursuant to a written commitment to make such loan which was binding on the plan on such date.

(b) At the time such loan was made, it was not a prohibited transaction within the meaning of section 503(b) of the Code or the corresponding provisions of prior law.

(c) Except for paragraphs (f) and (g), such loan meets the requirements of section I of this exemption. The requirements of paragraphs (h) and (i) of section I of this exemption shall be deemed met if met on or before May 23, 1976.

Sec. III. Definitions. For purposes of sections I and II above—

(a) The term "multiple employer plan" shall mean an employee benefit plan which is a multiemployer plan within the meaning of section 3(37) of the Act and section 414(f) of the Code, or a plan which meets all of the requirements of such sections other than the requirements of either or both (1) section 3(37) (A) (iii) of the Act and section 414(f) (1) (C) of the Code, and (2) section 3(37) (A) (iv) of the Act and section 414 (f) (1) (D) of the Code.

(b) The term "sole discretionary authority or control with respect to the management or disposition of the plan assets used to make such loan" means that the bank, insurance company, or savings and loan association has sufficient authority or control with respect to such assets to enable it, without reporting to the plan, obtaining its approval or comments, or permitting it a veto, other than as may be necessary to comply with the conditions of this exemption, to entertain a proposal to make such loan, negotiate its terms, and make such loan. The fact that the bank, insurance company, or savings and loan association performs these functions under broad investment guidelines from the plan, which may include instructions to the bank, insurance company, or savings and loan association generally to cause a part of the plan's assets to be invested in a certain type of loan, shall not prevent the bank, insurance company, or savings and loan association from being considered to have such "sole discretionary authority or control."

(c) An affiliate of any participating employer shall be treated as the same

entity as such participating employer. For this purpose a corporation or partnership is an affiliate of an incorporated or unincorporated participating employer if it is a member of a controlled group which includes such participating employer; and a controlled group shall be defined in the same manner as the term "controlled group of corporations" is defined in section 1563(a) of the Code, except that "50 percent" shall be substituted for "80 percent" wherever the latter percentage appears in such section, and except that in the case of a partnership, the term "corporation" shall be read as including a partnership, and the term "stock" shall be read as including a capital or profits interest in a partnership.

C. Office space, administrative services and goods. Multiple employer plans frequently share office space and administrative services (a "participating employer organization"), an employer any of whose employees are covered by the plan (a "participating employer") or an association of such employers (a "participating employer association"). Multiple employer plans also frequently share office space and administrative services with other multiple employer plans which may be parties in interest or disqualified persons with respect to such plan by reason of section 3(14) of the Act and section 4975(e)(2) of the Code.

In this regard, two or more multiple employer plans are not parties in interest or disqualified persons with respect to each other merely because they are maintained by the same plan sponsors. While the presence of trustees or fiduciaries who are common to more than one multiple employer plan does not make such plans parties in interest or disqualified persons to one another, a multiple employer plan may be a party in interest or a disqualified person with respect to another multiple employer plan (a) under section 3(14)(B) of the Act and section 4975(e)(2)(B) of the Code if it provides services to such other multiple employer plan, (b) under section 3(14)(H) of the Act and section 4975(e)(2)(H) of the Code if it holds, directly or indirectly, 10 percent or more of the shares of a person described, with respect to such other multiple employer plan, in subparagraph (B), (C), (D), (E), or (G) of section 3(14) of the Act or subparagraph (C), (D), (E), or (G) of section 4975(e)(2) of the Code, or (c) under section 3(14)(I) of the Act and section 4975(e)(2)(I) of the Code if it is a 10 percent or more (in capital or profits) partner or joint venturer of a person described, with respect to such other multiple employer plan, in subparagraph (B), (C), (D), (E), or (G) of section 3(14) of the Act or subparagraph (C), (D), (E), or (G) of section 4975(e)(2) of the Code.

One many occasions, office space and administrative services are furnished to a

multiple employer plan by a participating employee organization, employer, or employer association, or by another multiple employer plan which is a party in interest or disqualified person with respect to the plan. The furnishing of office space or administrative services to a plan by such parties in interest or disqualified persons will generally be exempt from the prohibited transaction provisions of section 406(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, if the conditions of section 408(b)(2) of the Act and section 4975(d)(2) of the Code are met.

In some instances, a multiple employer plan will secure office space and administrative services jointly with a participating employee organization, employer, or employer association, or with another multiple employer plan which is a party in interest or disqualified person with respect to the plan, and will share the costs of securing such office space or administrative services on a pro rata basis with respect to each party's use of such space or services. Such joint use of office space or administrative services does not constitute a prohibited transaction under either section 406(a) of the Act or section 4975(c)(1)(A) through (D) of the Code.

On occasion, however, a multiple employer plan will independently secure for its own use office space or administrative services, and will furnish part of such office space or administrative services to a participating employee organization, employer, or employer association, or to another multiple employer plan which is a party in interest or disqualified person with respect to the plan. Such transactions are prohibited transactions under section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code for which no statutory exemption is provided. However, the class exemption set forth below is intended to provide an exemption for such transactions under conditions designed to protect the interests of the plans involved and of their participants and beneficiaries.

The class exemption proposed on June 2, 1975 for such transactions related only to the provision by a plan of office space or administrative services to a participating employee organization, participating employer, or participating employer association, or to a related plan. Based on the representations contained in several letters of comment, the Department and the Service have determined to extend the exemption to the furnishing of goods, such as office furniture and supplies, by a plan to such persons.

In addition, in response to comments noting that multiple employer plans occasionally provide office space, services and goods to plans which are unrelated to such plan, the exemption as granted has been revised to permit a multiple employer plan to furnish office space, administrative services or goods not only to multiple employer plans with

the same plan sponsor, but to any multiple employer plan which is a party in interest or disqualified person, regardless of plan sponsors.

As proposed, the conditions of the class exemption required that the terms of such transactions must be at least as favorable to the plan as an arm's-length transaction with an unrelated party would be. It was pointed out in several letters of comment that multiple employer plans do not commonly engage in such transactions with persons other than participating employee organizations, employers, or employer associations, or other multiple employer plans, and that it would not, therefore, be possible for many plans to make the "arm's-length" evaluation required by the proposed exemption. Based on these comments, the exemption, as set forth below, has been revised to replace the "arm's-length" condition with a reasonableness test which, solely for purposes of the exemption, provides that reasonable compensation need not include a profit which would ordinarily be received in an arm's-length transaction, but must be sufficient to reimburse the plan for its costs.

Questions were also raised in the letters of comment regarding the conditions of the exemption requiring that the plan be permitted to terminate the relationship for the provision of office space or administrative services on reasonably short notice under the circumstances and without penalty. This condition is designed to preclude plans from being locked into arrangements which may become disadvantageous to such plans. However, this condition should not be deemed to prevent a multiple employer plan from, for example, entering into a long-term lease for the provision of office space to a participating employee organization, participating employer, or participating employer association, or to another plan, if such lease provides that the plan has the option to terminate such lease on reasonably short notice under the circumstances, notwithstanding the termination date set forth in the lease. Among the circumstances that would be considered in determining whether there is a reasonably short notice period for the termination of such a lease is the length of the notice period as compared to the length of the lease. For example, a one year notice period would not be considered unreasonable for terminating a 20 year lease.

The language of the recordkeeping requirement of paragraph (d) of the exemption has been modified to require only that a diligent and good faith effort be made to maintain the records necessary to verify compliance with the exemption.

It was also noted in many comment letters that multiple employer plans which have common trustees or plan sponsors may on numerous occasions be prevented from sharing office space, administrative services or goods under circumstances which would be beneficial to the interests of the plans involved and of their participants and beneficiaries by

reason of the provisions of section 406(b)(2) of the Act which, as here relevant, prohibit a fiduciary with respect to a plan from acting in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. However, none of the comments provided a sufficient basis for the granting of an exemption in connection with this application. The Department is prepared to consider applications for a class exemption from the prohibitions of section 406(b)(2) of the Act with respect to such transactions when such applications are received by the Department.

Exemption. Accordingly, the following exemption is granted 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 ERISA Procedure 75-1 (40 FR 184171, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722:

Sec. I. Prospective. Effective June 12, 1975, the restrictions of sections 406(a) and 407(a) 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 (D) of the Code, shall not apply to the leasing of office space or the provision of administrative services or sale or leasing of goods by a multiple employer plan to a participating employee organization, participating employer, or participating employer association, or to another multiple employer plan which is a party in interest or disqualified person with respect to such plan, provided that the following conditions are met:

(a) The plan receives reasonable compensation for the leasing of such office space or the provision of such administrative services or the sale or leasing of goods. Solely for purposes of this exemption, "reasonable compensation" need not include a profit which would ordinarily have been received in an arm's-length transaction, but must be sufficient to reimburse the plan for its costs.

(b) The arrangement allows any multiple employer plan which is a party to the transaction to terminate the relationship on a reasonably short notice under the circumstances.

(c) With regard to the leasing of office space by a multiple employer plan to a participating employer, such transaction will be exempt from the provisions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act only to the extent such provisions require that such office space constitute "qualifying employer real property" as that term is defined in section 407(d)(4) of the Act. The 10 percent limitation provisions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act will apply to such transactions as if the employer real property involved in the transaction were "qualifying employer real property."

(d) The plan which is the lessor of such office space or which provides such administrative services or goods, maintains or causes to be maintained during the period of such lease or of such pro-

vision of services or sale or leasing of goods and for a period of six years from the date of termination of such lease or such provision of services or sale or lease of goods, such records as are necessary to enable the persons described in paragraph (e) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period, and (2) such participating employee organization, participating employer, participating employer association, or other multiple employer plan shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (e) below.

(e) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (d) are unconditionally available at their customary location for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by the plan.

Sec. II. Retroactive. Effective January 1, 1975, the restrictions of sections 406(a) and 407(a) 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 (D) of the Code, shall not apply to the leasing of office space or the provision of administrative services or the sale or leasing of goods by a multiple employer plan to a participating employee organization, participating employer, or participating employer association, or to another multiple employer plan which is a party in interest or disqualified person with respect to such plan, which occurred before June 12, 1975, or which occurred before October 1, 1975 pursuant to a binding arrangement entered into before June 2, 1975, provided that such transaction was—

(a) Of a type that was ordinarily and customarily engaged in by multiple employer plans before January 1, 1975; and

(b) At the time it was entered into, not a prohibited transaction within the meaning of section 503(b) of the Code or the corresponding provisions of prior law, except that solely for purposes of this exemption the terms of such arrangement need not provide for a profit which would ordinarily have been received by the plan in an arm's-length transaction, provided that the compensation received by the plan is otherwise reasonable.

Sec. III. Definitions. For purposes of sections I and II above, the term "multiple employer plan" shall mean an em-

ployee benefit plan which is a multi-employer plan within the meaning of section 3(37) of the Act and section 414 (f) of the Code, or a plan which meets all of the requirements of such sections other than the requirements of either or both (a) section 3(37)(A)(iii) of the Act and section 414(f)(1)(C) of the Code, and (b) section 3(37)(A)(iv) of the Act and section 414(f)(1)(D) of the Code.

Signed at Washington, D.C. this 23rd day of March 1976.

JAMES D. HUTCHINSON,
Administrator of Pension and
Welfare Benefit Programs,
U.S. Department of Labor.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.
[FR Doc.76-8766 Filed 3-25-76; 8:45 am]

**Occupational Safety & Health
Administration
MINNESOTA STATE STANDARDS
Notice of Approval**

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On June 8, 1973, a notice was published in the FEDERAL REGISTER (38 FR 15076) of the approval of the Minnesota plan and the adoption of Subpart N to Part 1952 containing the decision.

The Minnesota plan provides for the adoption of Federal standards as State standards after an opportunity for public comment and public hearing. By letter dated December 3, 1975, from Russell B. Swanson, Deputy Commissioner, Minnesota Department of Labor and Industry, to Edward E. Estkowski, Regional Administrator, and incorporated as part of the plan, the State submitted State standards and amendments thereto comparable to 29 CFR Parts 1910, 1915, 1916, 1917, 1918, 1926, and 1928. These standards, which are described in the Minnesota Occupational Safety and Health Codes, were promulgated in the following manner:

(a) In accordance with Chapter 15 of the Minnesota Administrative Procedures Act (§ 15.0411 et seq. Minn. Stat. Ann.), a public hearing was held on December 4, 1972, for the purpose of adopting the initial General Industry and Construction standards of 29 CFR Parts 1910 and 1926, respectively, as published in the FEDERAL REGISTER on October 18,

1972, and the maritime standards of 29 CFR Part 1915, 1916, 1917 and 1918 as published in the FEDERAL REGISTER on October 19, 1972. These standards were adopted on February 23, 1973, upon the filing of an Order Adopting Rule with the Secretary of State for Minnesota.

(b) In accordance with the Minnesota Administrative Procedures Act, a hearing was held on June 25, 1973, for the purpose of adopting all changes, additions, deletions and corrections to the above Federal standards which became effective between the original promulgation date of such standards and May 1, 1973. These changes were adopted on August 27, 1973.

(c) In accordance with the Minnesota Administrative Procedures Act, a public hearing was held on December 3, 1973, for the purpose of adopting all changes, additions, deletions and corrections to all Federal standards which became effective between May 1, 1973, and October 15, 1973. These changes became effective on February 20, 1974.

(d) Pursuant to section 182.655 of the Minnesota Statutes (1974), a proposal was published to adopt the revised 29 CFR Part 1910 as published in the FEDERAL REGISTER on June 27, 1974; the revised 29 CFR Part 1926 as published in the FEDERAL REGISTER on June 24, 1974; and the revised 29 CFR Parts 1915, 1916, 1917, and 1918 as published in the FEDERAL REGISTER on June 19, 1974. With the exception of the toxic and hazardous substance standards of 29 CFR 1910.93c through 1910.93p, the revised standards were adopted on January 24, 1975.

(e) A proposal was published to adopt the vinyl chloride standard, 29 CFR 1910.93q, as published in the FEDERAL REGISTER on October 4, 1974. On February 4, 1975, the vinyl chloride standard 29 CFR 1910.93q and the toxic and hazardous substance standards of 29 CFR 1910.93c through 1910.93p were adopted.

(f) On August 29, 1975, a proposal was published to adopt changes, additions, deletions, and corrections to all Federal standards which became effective between the date of their revision under (d) above and July 1, 1975. In addition, it was proposed to adopt the agricultural standards of 29 CFR Part 1928. Not included in this proposal were corrections to 29 CFR 1910.93q (vinyl chloride) and changes and additions to 29 CFR 1910.67 (work platforms), 1910.70 (standards organizations for platforms), 1910.183 (helicopters), 1910.184 (slings), 1910.263 and 1910.274 (sources of standards for special industries), and 1910.275 (standards organizations for special industries). In addition, the recodification of the toxic and hazardous substance standards of 29 CFR 1910.93 through 1910.93q was not included in the notice. The proposal was adopted on October 22, 1975.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, as of the dates given above.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 South Dearborn Street, Chicago, Illinois 60604; State of Minnesota, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101; and the Office of the Associate Assistant Secretary for Regional Programs, Room N3603, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public participation.* Under § 1953.2 (c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Minnesota State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards as of the dates specified in the State standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 26, 1976.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Chicago, Illinois this 14th day of January 1976.

EDWARD E. ESTKOWSKI,
Regional Administrator.

[FR Doc.76-8711 Filed 3-25-76; 8:45 am]

Office of the Secretary

[TA-W-594]

AMERICAN GIRL FASHIONS, INC.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 13, 1976 in response to a worker petition received on that date which was filed on behalf of workers and former workers engaged in employment related to the production and distribution of women's shoes at the Ware, Massachusetts warehouse of American Girl Fashions, Inc., Braintree, Massachusetts.

Notice of the investigation was published in the FEDERAL REGISTER on March 12, 1976 (41 FR 10634). No public hearing was requested and none was held.

During the course of the investigation it was established that all workers at the Ware, Massachusetts warehouse of American Girl Fashions, Inc. are currently certified eligible to apply for adjustment assistance pursuant to a previous investigation (TA-W-23).

Therefore, this investigation has been terminated.

Signed at Washington, D.C. this 17th day of March 1976.

MARVIN M. FOOKS,
Acting Director, Office of
Trade Adjustment Assistance.

[FR Doc.76-8348 Filed 3-25-76;8:45 am]

[TA-W-539]

FOWNES BROTHERS & CO., INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-539; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 9, 1976 in response to a worker petition received on January 9, 1976 which was filed by the Textile Workers Union of America, AFL-CIO on behalf of workers and former workers producing women's slipper type shoes at the Amsterdam, New York plant of Fownes Brothers and Company, Inc., New York, New York.

The notice of investigation was published in the FEDERAL REGISTER on January 29, 1976 (41 FR 4384). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Fownes Brothers and Company, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the Americans Footwear Industries Association, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all the above criteria have been met.

Significant Total or Partial Separations. The average number of production workers at the Amsterdam plant declined 23 percent in the fourth quarter of 1974 compared to the same period in 1973. Employment declined in each quarter of 1975 compared to the same quarter in 1974.

Sales or Production or Both, Have Decreased Absolutely. Sales of all shoes at the Amsterdam, New York plant declined 30 percent in 1974 compared to 1973 and 28 percent in the first nine months of 1975 compared to the same period in 1974. Production at the Amsterdam plant fell 17 percent in 1974 compared to 1973 and 38 percent in the first nine months of 1975 compared to the same period in 1974.

Increased Imports. Imports of women's shoes, slipper types, increased from 84.2 millions of pairs in the first 10 months of 1974 to 95.1 millions of pairs in the first 10 months of 1975. The ratios of imports to domestic production and consumption increased from 124.4 and 55.4 respectively in 1970 to 174.5 and 63.6 in 1973. Although imports experienced a small decline from 1973 to 1974, in the first 10 months of 1975, the ratios of imports to domestic production and consumption increased to 154.6 and 60.7 respectively from 134.3 and 57.3 for the same period in 1974.

Contributed Importantly. The Department's investigation indicated that major customers of Fownes Brothers and Company, Inc., decreased their purchases from Fownes in favor of lower priced imported shoes. The customers revealed that a wider variety of styles of shoes like or directly competitive with those produced by Fownes were available at significantly cheaper prices. Consequently, the Amsterdam plant closed and all production and salaried workers employed at Fownes Amsterdam shoe plant were permanently laid-off.

Conclusion. After careful review of the facts obtained in the investigation, I concluded that increases of imports like or directly competitive with women's slipper type shoes produced at the Amsterdam, New York plant of Fownes Brothers and Company Inc., contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provision of the Act, I make the following certification:

All workers of the Shoe Division engaged in employment related to the production of women's shoes at the Amsterdam, New York plant of Fownes Brothers and Company, Inc. who became totally or partially separated from employment on or after December 16, 1974 and before October 31, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of March 1976.

JAMES F. TAYLOR,
Director, Planning and
Evaluation Staff.

[FR Doc.76-8347 Filed 3-25-76;8:45 am]

[TA-W-527]

HUGHES AIRCRAFT CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-527; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 19, 1975, in response to a worker petition received on that date which was filed on behalf of workers and former workers producing electronic subsystems for satellites at the Space and Communications Groups of Hughes Aircraft Company, El Segundo, California.

The notice of investigation was published in the FEDERAL REGISTER on January 12, 1976 (41 FR 1830). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Hughes Aircraft Company.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard whether either of the other criteria has been met, criteria (3) and (4) have not been met.

Hughes Aircraft Company produces electronic subsystems for satellites under the "Intelsat" program. Hughes produces the subsystems on a contractual basis for a consortium of 91 member nations which owns all satellites produced under the "Intelsat" program.

The evidence developed in the Department's investigation reveals that the separations of workers employed in the "Intelsat" program at Hughes Aircraft Company are due to the completion by Hughes of its contractual obligations toward the "Intelsat" program. Electronic subsystems currently being produced by