Exposure to Benzene, dated May 10, 1977; § 1910.1028, amended and added a paragraph to the Emergency Temporary Standard for Occupational Exposure to Benzene, dated May 24, 1977; a new Subpart T to Part 1910, Commercial Diving, dated July 22, 1977; § 1926.605 Marine Operations and Equipment amended to include Commercial Diving, dated July 22, 1977; § 1928.21 Safety and Health Standards for Agriculture, amended to exclude Commercial Diving, dated July 22, 1977; § 1928.21 Safety and Health Standards for Agriculture, amended to exclude air contaminant standards in Subparts B through T and Subpart Z from agricultural operations, dated July 29, 1977; § 1910.1044 Emergency Temporary Standard for Occupational Exposure to 1,2-dibromo-3-chloropropane, dated September 9, 1977; § 1910.1044 Emergency Temporary Standard for Occupational Exposure to 1,2-dibromo-3-chloropropane corrections, dated September 16, 1977.

These standards were promulgated by filing with the North Carolina Attorney General on May 16, 1977; June 2, 1977; July 29, 1977; August 18, 1977; September 29, 1977, respectively, pursuant to the North Carolina Occupational Safety and Health Act of 1973 (Chapter 295, General Statutes).

2. *Decision.* Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards are identical to the Federal standards and are hereby approved.

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 Commissioner of Labor, North Carolina Department of Labor, 11 West Edenton, Raleigh, N.C. 27611; Office of the Regional Administrator, Suite 587, 1375 Peachtree Street NE., Atlanta, Ga. 30309; and Office of the Director of Federal Compliance and State Programs, Room N3112, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) 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 good cause exists for not publishing the supplement to the North Carolina 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 and are therefore deemed to be at least as effective.

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

This decision is effective May 30, 1978.

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

Signed at Atlanta, Ga., this 19th day of December 1977.

COIS M. BROWN,
Acting Regional Administrator.

[FR Doc. 78-14901 Filed 5-26-78; 8:45 am]

[4510-26]

WASHINGTON 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 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 January 26, 1973, notice was published in the FEDERAL REGISTER (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of Federal standards as State standards after public hearing. Section 1953.20 provides that "where any alteration in the Federal program could have an adverse impact on the at least as effective as" status of the State program, a program change supplement to a State plan shall be required. In response to Federal standards changes, the State has submitted by letter, dated October 20, 1977, from James P. Sullivan, Assistant Director, to James Lake, Regional Administrator, and incorporated as part of the plan, a State standard comparable to 29 CFR 1910.309(c), Ground Fault Circuit Interrupters, as published in the FEDERAL REGISTER (41 FR 56696), dated December 21, 1976. This State standard, which is contained in WAC 296-24-955(c) General Safety and Health Standards, was promulgated after public hearing held on June 23, 1977, pursuant to Chapter 34.04 RCW and of the Open Public Meetings Act of 1971, Chapter 42.30 RCW.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is identical to the Federal standard.

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, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Wash. 98174; Department of Labor and Industries, General Administration Building, Olympia, Wash. 98504; and the Technical Data Center, Room N2439, 200 Constitution Avenue, Washington, D.C. 20210.

4. *Public participation.* Section 1953.2(c) of this chapter provides that when a State standard is identical to or "at least as effective" as comparable Federal standard and has been promulgated in accordance with State law, approval may be effective upon publication without an opportunity for further public participation. As the standard under consideration is identical to the Federal standard and has been promulgated in accordance with State law, it is approved without public comment.

This decision is effective May 30, 1978.

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

Signed in Seattle, Wash., this 11th day of January 1978.

JAMES W. LAKE,
Regional Administrator, Occupational Safety and Health Administration.

[FR Doc. 78-14902 Filed 5-26-78; 8:45 am]

[4510-29]

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 78-6]

CLASS EXEMPTION FOR TRANSACTIONS INVOLVING COLLECTIVELY BARGAINED MULTIPLE EMPLOYER APPRENTICESHIP AND TRAINING PLANS.

Prohibited Transaction Exemption

AGENCY: Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This class exemption exempts from sections 406(a)(1) (A), (C), and (D) of the Employee Retirement Income Security Act of 1974 (the Act) certain transactions between collectively bargained multiple employer apprenticeship plans and employers making contributions to these plans or employee organizations any of whose members are covered by the plans if certain conditions are met. It appears to the Department that without the relief provided by this exemption, such apprenticeship plans would have difficulty operating in accordance with the purposes for which they were es-

tablished. The exemption affects employers making contributions to such plans, sponsoring employee organizations, and persons who are participants in such plans.

DATE: The exemption is effective January 1, 1975.

FOR FURTHER INFORMATION CONTACT:

Mr. Rudolph Nuisel, Department of Labor, Washington, D.C., 202-523-8974 (this is not a toll-free number).

SUPPLEMENTAL INFORMATION: On July 29, 1977, notice was published in the FEDERAL REGISTER (42 FR 38794), that the Department of Labor (the Department) had under consideration a proposed class exemption from the restrictions of sections 406(a)(1)(A), (C), and (D) of the Act for transactions involving: (1) the purchase of personal property by a collectively bargained multiple employer-employee welfare benefit plan maintained for the purpose of providing apprenticeship or other training programs (hereinafter referred to as an apprenticeship plan) from an employer who contributes to such plan (hereinafter referred to as a contributing employer) or a wholly owned subsidiary of such an employer; and (2) the leasing of real property (excluding office space) or personal property by an apprenticeship plan from a contributing employer or a wholly owned subsidiary of such an employer. The exemption was requested in applications filed by the International Union of Operating Engineers, on behalf of 45 local affiliated apprenticeship and/or training plans and the Laborers' Training and Retraining Trust fund for Northern California. The applicants represented that apprenticeship and other training plans are an essential element in providing trained workers for the industries in which they operate. The proper functioning of these plans requires that, from time to time, they purchase goods and lease equipment or other property for use in the programs which they maintain. It has been customary for these plans, which are jointly sponsored by unions and employers, to obtain such goods and rentals from employers who are contributors to the plans. All such employers are signatories to collective bargaining agreements with the sponsoring unions.

The exemption was proposed in accordance with the procedure set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and all interested persons were invited to submit comments on the proposed exemption. The public comments received in response to this request generally supported the proposed exemption, although some commentators urged that it be expanded to provide exemptive relief for transactions between apprenticeship plans and parties in interest other than contributing employers (and their wholly owned subsidiaries) and for transactions prohibited by section 406(b)(2) of the Act. These and other comments are discussed below.

OTHER PARTIES IN INTEREST

The exemption, as proposed, would have provided relief for certain transactions between apprenticeship plans and contributing employers. Several comments urge the Department to expand the parties in interest from which, pursuant to the exemption, an apprenticeship plan could purchase goods or lease equipment or other property. Specifically, it was suggested that an apprenticeship plan be permitted to obtain goods and rentals from an association of which a contributing employer is a member (hereinafter referred to as a related employer association), from an employee organization any of whose members' work results in contributions being made to the apprenticeship plan (hereinafter referred to as a sponsoring employee organization) and from a multiple employer plan which is a party in interest with respect to the apprenticeship plan or related to the apprenticeship plan by reason of the existence of trustees common to both the apprenticeship plan and the multiple employer plan (hereinafter referred to as a related multiple employer plan).

After consideration of these comments, the Department has decided to expand the proposed exemption to permit apprenticeship plans to lease real property other than office space,[1] and to lease personal property incidental to the lease of such real property, from sponsoring employee organizations. It has been represented that there is a widespread need among apprenticeship plans for facilities to train apprentices. Many apprenticeship plans typically have insufficient capital to build such training centers, and, thus, their only realistic alternative is to enter into leasing arrangements. Traditionally, apprenticeship plans have leased such training facilities from, among others, the employee organizations which sponsor such plans. Sponsoring employee organizations have an interest in ensuring the continued existence and financial stability of the apprenticeship plans which they sponsor. Whereas persons unrelated to apprenticeship plans may be unwilling or uninterested in leasing property to such plans, sponsoring employee organizations often are willing to devote the necessary time and expense to provide apprenticeship plans with the needed training centers and facilities.[2] Accordingly, the Department believes that permitting apprenticeship plans to lease real property, including the lease of personal property incidental to the lease of such real property, from sponsoring employee organizations under all the conditions of the exemption is appropriate.

At this time, the Department has decided not to extend exemptive relief to transactions for the purchase or lease of personal property (other than incidental to the lease of real property) by apprenticeship plans from sponsoring employee organizations or for the lease of real property (other than office space) or purchase or lease of personal property by an apprenticeship plan from a related employer association. The comment letters did not supply enough information to demonstrate to the Department that such transactions are sufficiently common to justify class-wide relief.

With respect to transactions for the lease of real property (other than office space) or purchase or lease of personal property by an apprenticeship plan from a related multiple employer plan, the Department notes that section C of Prohibited Transaction Exemption 76-1 (PTE 76-1) (41 FR 12740, March 26, 1976) already provides exemptive relief for transactions for the leasing of office space and sale or leasing of goods by a multiple employer plan to another multiple employer plan which is a party in interest with respect to such plan,[3] provided certain conditions are met. Subject to the conditions of PTE 76-1, then, a multiple employer apprenticeship plan is not prohibited by the prohibitions of section 406(a) from the lease of office space or the purchase or lease of goods from a related multiple employer plan. The only transaction not already exempt from the prohibitions of section 406(a) under section C of PTE 76-1 is the lease of real property other than office space between related multiple employer plans. The comments, however, did not make a showing that relief beyond that provided by PTE 76-1 is justified or necessary and, accordingly, the Department has determined not to expand the ap-

[1] Section 408(b)(2) of the Act and regulations issued thereunder, § 2550.408b-2 (42 FR 32389, June 24, 1977), already permit a plan to lease office space from a party in interest if certain conditions are met.

[2] One commentator indicated that few unrelated parties would be willing to enter into long term leases with an apprenticeship plan because of their concern that the plan might not receive additional necessary funding after the conclusion of the collective bargaining agreement.

[3] It should be noted, however, that not all related multiple employer plans are parties in interest with respect to each other. for example, if plan A merely has the same contributing employer(s), the same sponsoring employee organization(s), the same participants and the same trustees as plan B, and plan A and plan B have no other relationships, plan A and plan B are not parties in interest with respect to each other.

prenticeship exemption at this time to permit multiple employer apprenticeship plans to lease real property other than office space from related multiple employer plans.

TRUSTEES AND SECTION 406(b)(2)

Several comments urge the Department to delete from the proposed exemption the condition contained in section II(a)(1) thereof which provided that:

Neither the contributing employer, the wholly owned subsidiary of the employer nor any affiliate of such employer or subsidiary is a fiduciary with respect to the apprenticeship plan on the date of the transaction or has been a fiduciary respecting the apprenticeship plan at any time during the 2 years preceding the date of the transaction.

The comments represent that the structure of certain industries is such that the trustees of multiemployer apprenticeship plans representing contributing employers are drawn from the larger employers in the industry and these employers generally have available the largest pool of property for sale and lease to apprenticeship plans. Thus, it is asserted that adoption of proposed section II(a)(1) would exclude these employers from engaging in sale and lease transactions with apprenticeship plans to the detriment of such plans.

After considering these comments, the Department has decided not to adopt proposed section II(a)(1). The Department is taking this action because the imposition of the restriction contained in that section would diminish substantially the usefulness of the exemption to apprenticeship plans and the other conditions of the exemption provide sufficient protection for apprenticeship plans engaging in the same and lease transactions described herein.

While deletion of proposed section II(a)(1) will permit transactions between apprenticeship plans and contributing employers and sponsoring unions under circumstances where affiliates of such employers or members of such unions serve on the board of trustees administering the plan, the Department emphasizes that the exemption, as adopted, does not contain relief from section 406(b) of the Act. In this regard, the Department has received comments which urge that the proposed exemption be expanded to include relief from the prohibition of section 406(b)(2) of the Act. Section 406(b)(2) prohibits a fiduciary with respect to a plan from acting, in his individual or in any other capacity, 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.

Exemption from section 406(b) is not necessary for many of the transactions in which apprenticeship plans purchase or lease property from parties in interest because such transactions are with parties who are not fiduciaries and do not involve the approving fiduciary in transactions which would be prohibited by section 406(b). Moreover, section 408(a) of the Act states that the Department may not grant an exemption from section 406(b) of the Act without affording an opportunity for a hearing. Such a hearing with respect to this exemption would further delay its adoption in final form. Consequently, for these reasons, the Department has determined to adopt the exemption without providing relief from section 406(b) of the Act. Interested persons may wish to bring to the attention of the Department, by application in accordance with the procedure established in ERISA Proc. 75-1 (40 FR 18471, April 28, 1975), as amended (42 FR 57183, November 1, 1977), their views as to whether the exemption, as adopted, should be amended to include relief from any of the prohibitions of section 406(b) of the Act, and, if so, the reasons therefor.

With respect to the absence of relief from section 406(b) of the Act, the Department notes the following. Section 406(b)(1) of the Act prohibits a fiduciary of a plan from dealing with the assets of a plan in his own interest or for his own account. It would constitute a prohibited transaction under section 406(b)(1) of the Act for a trustee of an apprenticeship plan who was, for example, an employee, officer, director or other affiliate of a contributing employer to participate in a decision of the plan to purchase or lease property from such contributing employer. Similarly, a trustee of a plan who was a member or officer of the union sponsoring the plan would engage in an act described in section 406(b)(1) of the Act by participating in a decision of the plan to lease property from such union. However, by removing himself from all consideration by the plan whether or not to engage in the transaction and by not otherwise exercising any of the authority, control or responsibility which makes him a fiduciary to cause the plan to engage in the transaction, the trustee (who is associated with the contributing employer or sponsoring employee organization selling or leasing the property to the plan) could avoid engaging in a section 406(b)(1) prohibited transaction.

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 or party in interest 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 require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

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

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is in fact a prohibited transaction.

EXEMPTION

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Proc. 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations: (a) the exemption is administratively feasible; (b) the exemption is in the interests of the plans affected and their participants and beneficiaries; and (c) the exemption is protective of the rights of participants and beneficiaries of the affected plans. Accordingly, the following exemption is granted, effective January 1, 1975, under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Proc. 75-1.

Section I.—Transactions Covered by this Exemption. (a) The purchase of personal property by a multiple employer welfare benefit plan maintained for the purpose of providing apprenticeship or other training programs (hereinafter referred to as an apprenticeship plan) from an employer who makes contributions to such plan (hereinafter referred to as a contributing employer) or from a wholly-owned subsidiary of such an employer.

(b) The leasing of personal property by an apprenticeship plan from a contributing employer or from a wholly owned subsidiary of such an employer.

(c) The leasing of real property (other than office space within the contemplation of section 408(b)(2) of the Act) by an apprenticeship plan from a contributing employer, a wholly owned subsidiary of such an employer, or from an employee organization any of whose members' work results in contributions being made to the apprenticeship plan (hereinafter referred to as a sponsoring employee organization).

(d) The leasing of personal property incidental to the leasing of real property by an apprenticeship plan from a sponsoring employee organization.

Section II.—Conditions. The transactions described in section I above are exempt only if:

(a) The transaction is on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be;

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

(c) The apprenticeship plan which enters into any of the transactions described in section I above maintains or causes to be maintained for a period of 6 years form the termination of any such transaction such records as are necessary to enable the persons described in paragraph (d) of this section to determine whether the conditions of this exemption have been met, except that:

(1) This paragraph (c) and paragraph (d) below will not apply to transactions effected prior to July 24, 1978, and

(2) A prohibited transaction will not be deemed to have occurred, if due to circumstances beyond the control of the fiduciaries of such apprenticeship plan, such records are lost or destroyed prior to the end of the 6-year period; and

(d) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by (1) the Department of Labor, (2) any contributing employer, (3) any employee of a contributing employer, (4) any sponsoring employee organization, (5) any person receiving benefits under the apprenticeship plan, and (6) any duly authorized employee or representative of a person described in (1) through (5) of this paragraph.

Section III.—Definitions. For purposes of this exemption the term "multiple employer welfare benefit plan" means a welfare plan which is a multiemployer plan within the meaning of section 3(37) of the Act, or a welfare plan which meets the requirements of at least subsection 3(37)(A) (i), (ii) and (v) of the Act.

Signed at Washington, D.C., this 24th day of May 1978.

IAN D. LANOFF,
Administrator, Pension Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 78-14897 Filed 5-24-78; 3:44 pm]

[4510-28]

[TA-W-2575]

ANDERSON DEVELOPMENT CORP., MIAMI, ARIZ.

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-2575: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 9, 1977, in response to a worker petition received on November 2, 1977, which was filed on behalf of workers and former workers of the Anderson Development Corp., who are engaged in the mining, heating and leaching of copper at the Bluebird Mine, Miami, Ariz. The Department's investigation revealed that Anderson workers were engaged only in the mining of copper ore at the Bluebird Mine owned by Ranchers Exploration and Development Corp. During the course of the investigation, it was determined that Ranchers Exploration and Development Corp. is the workers' firm.

The Notice of Investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59565). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Ranchers Exploration and Development Corp., Anderson Development Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, 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 Act must be met. It is concluded that all of the criteria have been met.

U.S. imports of refined copper increased from 192 thousand short tons in 1972 to 203 thousand short tons and 314 thousand short tons, respectively, in 1973 and 1974. U.S. imports of refined copper declined to 147 thousand short tons in 1975 before increasing to 384 thousand short tons in 1976 and 391 thousand short tons in 1977.

The ratio of imported refined copper to domestic production increased from 8.6 percent in 1972 to 9.0 percent and 15.2 percent, respectively, in 1973 and 1974. The ratio of imports to domestic production declined to 8.6 percent in 1975 before increasing to 21.0 percent in 1976. The ratio of imports to domestic production increased further, to 22.2 percent in 1977.

While imports of refined copper had increased by 161 percent in 1976 compared to 1975, domestic demand increased at only a fraction of that rate. Inventory levels of domestic and imported copper on consignment at domestic refineries in December 1976 were 31.4 percent above December 1975 levels and were 143.2 percent above December 1974 levels. Ranchers and other domestic producers of refined copper lost sales in 1977 because of the excessive inventories of domestic and imported refined copper.

Imports of copper are affected by the differential between the domestic producers price for copper and the price established by the LME (London Metals Exchange). When the LME price drops more than the estimated transportation costs of 5 to 8 cents per pound below the domestic producers price, the demand for imported copper increases. During May and June 1977 the LME price was almost 11 cents per pound below the domestic producers price and in July and August 1977 the LME price was almost 12 cents per pound below the domestic producers price. At the same time, the abundant supply of copper stocks in the foreseeable future provides no reason for domestic consumers of copper to maintain ties with domestic producers for purposes of a guarantee against copper shortages. Consequently, in 1977, when many domestic copper producers curtailed production because of the depressed market price for copper, imports of refined copper increased compared to 1976.

In October, 1977 Ranchers curtailed mining operations at the Bluebird Mine. Since then no new copper ore has been mined. This decision was based mainly on an attempt to avoid losses which Ranchers would incur were it to continue normal production levels at the current market prices for copper. Ranchers plans to resume normal operations at the Bluebird Mine should market conditions improve.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with copper produced at the Bluebird Mine, Miami, Ariz., of Ranchers Exploration and Development Corp. contributed importantly to the decline in sales and production at the mine and to the total or partial separations of workers of Anderson Development Corporation at the Bluebird Mine. In accordance with the provisions of the Act, I make the following certification:

All workers of Anderson Development Corp., at the Bluebird Mine, Miami, Ariz. who became totally or partially separated from employment on or after September 1, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.