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Part I

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Agencies in this issue—

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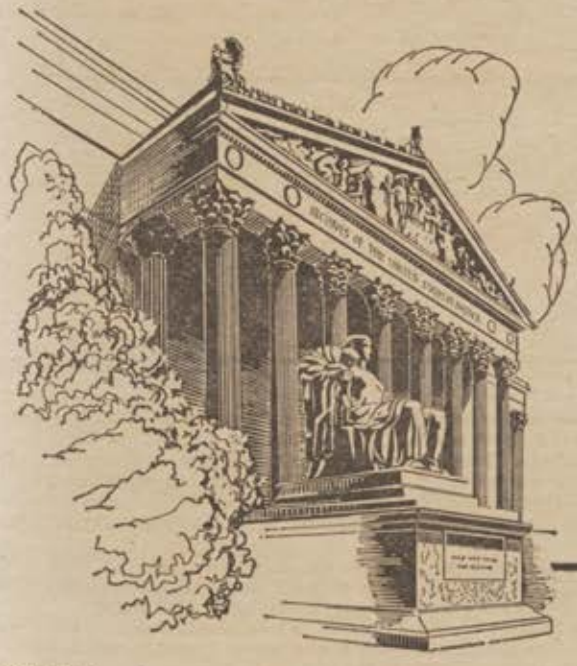

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List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1970, and specifies how they are affected.

Rules and Regulations

Title 7—AGRICULTURE

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER G—DETERMINATION OF PROPORTIONATE SHARES

[Rev. 3, Supp. 3]

PART 849—DOMESTIC BEET SUGAR PRODUCING AREA PREVENTED ACREAGE CREDIT; 1967 AND SUBSEQUENT CROPS

Approved Local Areas for the 1969 Crop of Sugar Beets

Pursuant to the provisions of section 302(b) of the Sugar Act of 1948, as amended, § 849.12 is added to read as follows:

§ 849.12 Approved local areas for the 1969 crop of sugar beets.

For purposes of considering eligibility for prevented acreage credit, the respective county Agricultural Stabilization and Conservation Committees have determined with respect to the local producing areas listed herein that on 10 percent or more of the sugar beet farms in each area, or on an acreage equal to 10 percent or more of the number of acres planted to sugar beets on farms in each area, the planting of sugar beets was prevented because of drought, flood, storm, freeze, disease, or insects, or the planting or harvesting was prevented by other similar abnormal and uncontrollable conditions determined by the Deputy Administrator, State and County Operations, in accordance with § 849.2.

(a) *Arizona.*

COUNTY AND AREAS

Graham: Area 1; Area 2.
Maricopa: Area 5.

(b) *California.*

COUNTY AND AREAS

Butte: Area 1; Area 2.
Colusa: Area 2.
Fresno: Area 3; Area 4.
Imperial: Area 6; Area 9.
Kern: Area 1; Area 2; Area 9.
Kings: Area 1; Area 2.
Madera: Madera County.
Merced: Area 1; Area 2.
Monterey: Area 1; Area 2; Area 3; Area 4; Area 5; Area 6; Area 7; T. 14 S., R. 3 E.; T. 15 S., R. 3 E.; T. 18 S., R. 6 E.; T. 18 S., R. 7 E.; T. 19 S., R. 8 E.
Sacramento: Area 2; Area 3.
San Benito: San Benito County.
San Joaquin: Area 1; Area 6.
San Luis Obispo: Area 1; Area 2.
Santa Barbara: Area 1; Area 2; Area 3.
Santa Clara: Santa Clara County.
Santa Cruz: Santa Cruz County.
Solano: Area 1; Area 2; Area 3; Area 4; T. 7 N., R. 1 E.; T. 5 N., R. 3 E.
Sutter: Area 1.
Tehama: Tehama County.
Tulare: Area 2; Area 6; T. 20 S., R. 23 E.; T. 20 S., R. 24 E.; T. 20 S., R. 25 E.; T. 20 S., R. 26 E.
Ventura: Area 1; Area 2.
Yolo: Area 6.

(c) *Colorado.*

COUNTY AND AREAS

Adams: Area 2.

(d) *Idaho.*

COUNTY AND AREAS

Franklin: Area 1; Area 2; Area 3.

(e) *Iowa.*

COUNTY AND AREAS

Franklin: Franklin County.

(f) *Michigan.*

COUNTY AND AREAS

Huron: Area 2; Area 3; Area 4; Area 5; Brookfield; Fairhaven; Sand Beach.
Monroe: Area 1; Area 3.
Saginaw: Area 2; Area 5; Spaulding.
St. Clair: Area 1; Area 2; Area 3.
Sanilac: Area 2; Area 3; Area 4; Area 5; Area 6; Custer; Marlette; Watertown.

(g) *Minnesota.*

COUNTY AND AREAS

Faribault: Faribault County.
Martin: Martin County.
Redwood: Redwood County.
Yellow Medicine: Yellow Medicine County.

(h) *Montana.*

COUNTY AND AREAS

Yellowstone: Area 1

(i) *New York.*

COUNTY AND AREAS

Cayuga: Area 2.
Onondaga: Onondaga County.
Orleans: Orleans County.

(j) *North Dakota.*

COUNTY AND AREAS

Cass: Area 4.
Pembina: Area 4

(k) *Ohio.*

COUNTY AND AREAS

Ottawa: Area 1; Allen; Benton; Harris.

Statement of bases and considerations. One of the conditions of eligibility of a sugar beet producer for prevented acreage credit, as provided in § 849.2 of this chapter, is that the farm of such producer be located in a local producing area for which the county Agricultural Stabilization and Conservation Committee determines that the planting or harvesting of sugar beets was adversely, seriously and generally affected by certain uncontrollable natural conditions on 10 percent or more of the sugar beet farms in the area or on an acreage equal to 10 percent or more of the number of acres planted to sugar beets on farms in the area.

The purpose of this supplement is to give notice that specific local producing areas have qualified under the requirements of § 849.2 with respect to the 1969 crop of sugar beets.

(Secs. 302, 403, 61 Stat. 930 as amended, 932; 7 U.S.C. 1132, 1153)

Effective date. Date of publication.

Signed at Washington, D.C., on April 2, 1970.

CHAS. M. COX,
Acting Deputy Administrator, State and County Operations.

[F.R. Doc. 70-4356; Filed, Apr. 8, 1970; 8:51 a.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Navel Orange Reg. 204]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.504 Navel Orange Regulation 204.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 33 F.R. 15471), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due

notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 7, 1970.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period April 10, 1970, through April 16, 1970, are hereby fixed as follows:

(i) District 1: 780,000 cartons;

(ii) District 2: 220,000 cartons;

(iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 8, 1970.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-4437; Filed, Apr. 8, 1970; 11:37 a.m.]

[Valencia Orange Reg. 308]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 908.608 Valencia Orange Regulation 308.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 7, 1970.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period April 10, 1970, through April 16, 1970, are hereby fixed as follows:

(i) District 1: 13,398 cartons;

(ii) District 2: 16,033 cartons;

(iii) District 3: 150,000 cartons.

(2) As used in this section, "handler," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 8, 1970.

ARTHUR E. BROWNE,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-4445; Filed, Apr. 8, 1970; 12:07 p.m.]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 35—HUMAN USES OF BYPRODUCT MATERIAL

Technetium-99m for Thyroid Scans

Notice is hereby given of the amendment of the Atomic Energy Commission's regulation "Human Uses of Byproduct Material," 10 CFR Part 35.

Section 35.100 of Part 35 lists two groups of diagnostic uses of byproduct material with well-established clinical procedures. Section 35.14 specifies that the Commission will consider an application for a specific license for any diagnostic use listed in Group I or Group II of § 35.100 as an application for all of the uses within the group if the applicant is qualified.

The use of technetium-99m as pertechnetate for thyroid scans has become a well-established clinical procedure. The amendment set forth below adds to Group II of § 35.100 the use of technetium-99m as pertechnetate for thyroid scans.

Because this amendment relates solely to minor procedural matters, the Commission has found that good cause exists for omitting notice of proposed rule making, and public procedure thereon, as unnecessary. Since the amendment relieves from restrictions under regulations currently in effect, it will become effective without the customary 30 day notice.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 35, is published as a document subject to codification, to be effective upon publication in the FEDERAL REGISTER.

Paragraph (b) of § 35.100 of 10 CFR Part 35 is amended to add technetium 99m as pertechnetate for thyroid scans as follows:

§ 35.100 Schedule A—Groups of diagnostic uses of byproduct material in humans.

* * * * *

(b) *Group II.* Scans and tumor localizations.

* * * * *

(14) Technetium-99m as pertechnetate for thyroid scans.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

Dated at Germantown, Md., this 31st day of March 1970.

For the Atomic Energy Commission.

F. T. HOBBS,
Acting Secretary.

[F.R. Doc. 70-4284; Filed, Apr. 8, 1970; 8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 70-WA-14]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Additional Control Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate control area within the geographical boundaries of Warning Areas W-105, W-106, and W-107 from 10,000 feet MSL to Flight Level 450.

The Air Traffic Control System has been affected by the absence of large numbers of controller personnel on all shifts. This absence has made an impact upon the movement of essential air traffic, causing delays, cancellations and intolerable burdens upon the safe movement of air traffic, especially in the heavily congested northeast area.

It has been determined that a measure of relief can be gained by establishing control area within Warning Areas W-105, W-106, and W-107 from 10,000 feet MSL to Flight Level 450.

Since a situation exists where safety requires immediate adoption of this amendment, it is found that notice and public procedure thereon are impracticable, and good cause exists for making this amendment effective on less than 30 days notice.

Since this action involves designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective April 7, 1970, as hereinafter set forth.

In § 71.163 (35 F.R. 2046) the following is added:

NEW YORK, N.Y.

That airspace within Warning Areas W-105, W-106, and W-107, extending upward from 10,000 feet MSL to Flight Level 450 and which lies northwest of a line 25 miles parallel to and southeast of a direct course from the Sea Isle, N.J., VORTAC to the Nantucket, Mass., VORTAC.

(Secs. 307(a), 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348 and 1510; Executive Order 10854, 34 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on April 7, 1970.

T. MCCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 70-4393; Filed, Apr. 8, 1970; 8:52 a.m.]

[Airspace Docket No. 70-WA-12]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

PART 75—ESTABLISHMENT OF JET ROUTES

Designation of Control Area and Jet Route

The purpose of these amendments to Parts 71 and 75 of the Federal Aviation Regulations is to designate Jet Route No. 93 from Sea Isle, N.J., direct to Nantucket, Mass., and associated controlled airspace for the portion of the route outside of the Continental Control Area to relieve congestion caused by the sudden diminution of essential air traffic services.

This jet route with the associated controlled airspace will provide a bypass route east of the New York Terminal Area for the safe and expeditious movement of high altitude coastal air traffic. Specific dates and times for the exercise of this jet route and control area will be published in a Notice to Airmen.

The Air Traffic Control System has been affected by the absence of large numbers of controller personnel on all shifts. This absence has impacted upon the movement of essential air traffic, causing delays, cancellations and intolerable burdens upon the safe movement of air traffic especially in the heavily congested northeast area.

It has been determined that a measure of relief can be gained by temporarily establishing a new jet route from Sea Isle to Nantucket and associated control area.

Since a situation exists where safety requires immediate adoption of these amendments, it is found that notice and public procedure thereon are impracticable, and good cause exists for making these amendments effective on less than 30 days notice.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

In consideration of the foregoing, Parts 71 and 75 of the Federal Aviation Regulations are amended, effective immediately, as hereinafter set forth.

1. Section 75.100 (35 F.R. 2359) is amended by adding the following:

Jet Route No. 93 (Sea Isle, N.J., to Nantucket, Mass.) From Sea Isle, N.J., direct to Nantucket, Mass.

2. Section 71.161 (35 F.R. 2044) is amended by adding the following:

J-93 From Sea Isle, N.J., to Nantucket, Mass., including the additional airspace extending upward from 18,000 feet MSL to FL-450 bounded on the east by J-93 and on the west by J-121 and J-62.

(Secs. 307(a), 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348 and 1510; Executive Order 10854, 34 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on April 7, 1970.

T. MCCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 70-4392; Filed, Apr. 8, 1970; 8:52 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket C-1703]

PART 13—PROHIBITED TRADE PRACTICES

J. F. Young-Boyd Bennett Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.50 *Dealer or seller assistance;* § 13.60 *Earnings and profits;* § 13.70 *Fictitious or misleading guarantees;* § 13.175 *Quality of product or service.* Subpart—Misrepresenting oneself and goods—Goods: § 13.1608 *Dealer or seller assistance;* § 13.1615 *Earning and profits;* § 13.1647 *Guarantees;* § 13.1715 *Quality.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, J. F. Young-Boyd Bennett Inc., et al., Louisville, Ky., Docket C-1703, Mar. 9, 1970]

In the Matter of J. F. Young-Boyd Bennett Inc., a Corporation, Doing Business as Young-Bennett Chinchilla Ranch, and Boyd Bennett and J. F. Young, Individually and as Officers of Said Corporation

Consent order requiring a Louisville, Ky., seller of chinchilla breeding stock to cease making exaggerated earning claims misrepresenting the quality of its stock, deceptively guaranteeing the fertility of its stock, and misrepresenting its services to its customers.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That J. F. Young-Boyd Bennett Inc., a corporation, and its officers, doing business as Young-Bennett Chinchilla Ranch, or under any other trade name or names, and Boyd Bennett and J. F. Young, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breeding stock or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. It is commercially feasible to breed or raise chinchillas in homes, basements or outbuildings, or other quarters or buildings unless in immediate conjunction therewith it is clearly and conspicuously disclosed that the represented quarters or buildings can only be adaptable to and suitable for the breeding and raising of chinchillas on a commercial basis if they have the requisite space, temperature, humidity, ventilation and other environmental conditions.

2. Breeding chinchillas as a commercially profitable enterprise can be achieved without previous knowledge or experience in the breeding, caring for and raising of such animals.

3. Chinchillas are hardy animals or are not susceptible to disease.

4. Purchasers of respondents' chinchilla breeding stock will receive top quality or "Empress Certified" quality chinchillas.

5. Each female chinchilla purchased from respondents and each female offspring will produce at least 3.8 live young per year.

6. The number of live offspring produced per female chinchilla is any number or range of numbers; or representing, in any manner, the past number or range of numbers of live offspring produced per female chinchilla of purchasers of respondents' breeding stock unless, in fact, the past number or range of numbers represented are those of a substantial number of purchasers and accurately reflect the number or range of numbers of live offspring produced per female chinchilla of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

7. Each female chinchilla purchased from respondents and each female offspring will produce successive litters of one to six live offspring at 111-day intervals.

8. The number of litters or sizes thereof produced per female chinchilla is any number or range thereof; or representing, in any manner, the past number or range of numbers of litters or sizes produced per female chinchilla of purchasers of respondents' breeding stock unless, in fact, the past number or range of numbers represented are those of a substantial number of purchasers and accurately reflect the number or range of numbers of litters or sizes thereof produced per female chinchilla of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

9. Pelts from the offspring of respondents' chinchilla breeding stock sell for an average price of $30 per pelt; or that pelts from the offspring of respondents' breeding stock generally sell from $20 to $65 each.

10. Chinchilla pelts will sell for any price, average price, or range of prices; or representing, in any manner, the past price, average price or range of prices of pelts of purchasers of respondents' breeding stock unless, in fact, the past price, average price or range of prices represented are those of a substantial number of purchasers and accurately reflect the price, average price or range of prices realized by these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

11. A purchaser with fifty females of respondents' breeding stock will have, from the sale of pelts, a yearly income of $3,000.

12. Purchasers of respondents' breeding stock will realize earnings, profits or income in any amount or range of amounts; or representing, in any manner, the past earnings, profits or income of purchasers of respondents' breeding stock unless, in fact, the past earnings, profits or income represented are those of a substantial number of purchasers and accurately reflect the average earnings, profits or income of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

13. Breeding stock purchased from respondents is guaranteed or warranted without clearly and conspicuously disclosing, in immediate conjunction therewith, the nature and extent of the guarantee, the manner in which the guarantor will perform thereunder and the identity of the guarantor.

14. Chinchillas or chinchilla pelts are in great demand; or that purchasers of respondents' breeding stock can expect to be able to sell the offspring or the pelts of the offspring of respondents' chinchillas because said chinchillas or pelts are in great demand.

15. The assistance or advice furnished to purchasers of respondents' chinchilla breeding stock by respondents will enable purchasers to successfully breed or raise chinchillas as a commercially profitable enterprise.

16. Respondents' operation is the largest producer of chinchillas in the eastern United States; or misrepresenting, in any manner, the size or kind of respondents' facilities.

B. 1. Misrepresenting, in any manner, the assistance, training, services or advice supplied by respondents to purchasers of their chinchilla breeding stock.

2. Misrepresenting, in any manner, the earnings or profits to purchasers or the quality or reproduction capacity of any chinchilla breeding stock.

C. Failing to deliver a copy of this order to cease and desist to all present and future salesmen and other persons engaged in the sale of the respondents' products or services and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: March 9, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-4294; Filed, Apr. 8, 1970; 8:45 a.m.]

[Docket C-1704]

PART 13—PROHIBITED TRADE PRACTICES

Southern Motor Lodges, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.50 *Dealer or seller assistance;* § 13.60 *Earnings and profits;* § 13.70 *Fictitious or misleading guarantees;* § 13.71 *Financing;* § 13.110 *Endorsements, approval and testimonials;* § 13.175 *Quality of product or service.* Subpart—Misrepresenting oneself and goods—Goods: § 13.1608 *Dealer or seller assistance;* § 13.1615 *Earnings and profits;* § 13.1647 *Guarantees;* § 13.1665 *Endorsements;* § 13.1715 *Quality.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Southern Motor Lodges, Inc., et al., Tifton, Ga., Docket C-1704, Mar. 9, 1970]

In the Matter of Southern Motor Lodges, Inc., a Corporation, Doing Business as Chinchilla Corporation of America, a Division of Said Corporation, and Richard B. Winkler, Individually and as an Officer of Said Corporation, and Robert A. Lemke, Individually and as Former General Manager of Said Division

Consent order requiring a Tifton, Ga., seller of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality of its stock, deceptively guaranteeing its fertility, implying that its business operations are approved by any Federal agency, that it is a member of any national chinchilla breeders association, and that bank financing is available for purchase of its stock.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Southern Motor Lodges, Inc., a corporation, doing business as Chinchilla Corporation of America, or trading and doing business under any other name or names, and its officers, and Richard B. Winkler, individually and as an officer of said corporation, and Robert A. Lemke, individually and as former general manager of Chinchilla Corporation of America, a division of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale,

sale or distribution of chinchilla breeding stock or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing directly or by implication that:

1. It is commercially feasible to breed or raise chinchillas in homes, garages or spare buildings, or other quarters or buildings, unless in immediate conjunction therewith it is clearly and conspicuously disclosed that the represented quarters or buildings can only be adaptable to and suitable for the breeding and raising of chinchillas on a commercial basis if they have the requisite space, temperature, humidity, ventilation and other environmental conditions.

2. Breeding chinchillas as a commercially profitable enterprise can be achieved without previous knowledge or experience in the breeding, caring for and raising of such animals.

3. Each female chinchilla purchased from respondents and each female offspring will usually litter successively several times annually producing one to seven offspring per litter, or an average of two to three offspring per litter.

4. The number of litters or sizes thereof produced per female chinchilla is any number or range thereof; or representing, in any manner, the past number or range of numbers of litters or sizes produced per female chinchilla or purchasers of respondents' breeding stock unless in fact the past number or range of numbers represented are those of a substantial number of purchasers and accurately reflect the number or range of numbers of litters or sizes thereof produced per female chinchilla of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

5. Offspring of respondents' chinchilla breeding stock sell for as much as $120 each and will have pelts that sell for an average price of $20 per pelt; or that pelts from the offspring of respondents' breeding stock generally sell from $20 to $60 each.

6. Chinchilla pelts from respondents' breeding stock will sell for any price, average price or range of prices; or representing, in any manner, the past price, average price or range of prices of purchasers of respondents' breeding stock unless in fact the past price, average price or range of prices represented are those of a substantial number of purchasers and accurately reflect the price, average price or range of prices realized by these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

7. A purchaser with 50 females of respondents' chinchilla breeding stock will have a yearly income of $3,000 from the sale of pelts.

8. Purchasers of respondents' breeding stock will realize earnings, profits or income in any amount or range of amounts; or representing, in any manner, the past earnings, profits or income of purchasers of respondents' breeding stock unless in fact the past earnings, profits or income represented are those of a substantial number of purchasers and accurately reflect the average earnings, profits or income of those purchasers under circumstances similar to those of the purchaser to whom the representation is made.

9. Breeding stock purchased from respondents is guaranteed or warranted without clearly and conspicuously disclosing the nature and extent of the guarantee, the manner in which the guarantor will perform thereunder and the identity of the guarantor.

10. Respondents' chinchillas are guaranteed unless respondents do in fact promptly fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in any guarantee or warranty applicable to each and every chinchilla.

11. Chinchillas or chinchilla pelts are in great demand; or that purchasers of respondents' breeding stock can expect to be able to sell the offspring of respondents' chinchillas because said chinchillas or pelts are in great demand.

12. Respondents will purchase all or any of the offspring raised by purchasers of respondents' breeding stock for $40 per mixed pair of standard and $100 per beige mutation chinchillas or any other price or prices unless respondents do in fact purchase all of the offspring offered by said purchasers at the prices and on the terms and conditions represented.

13. The assistance or advice furnished to purchasers of respondents' chinchilla breeding stock by respondents will enable purchasers to successfully breed or raise chinchillas as a commercially profitable enterprise.

14. Respondents' business operations in the sale of respondents' breeding stock are in the purview of and approved by the Federal Trade Commission, Interstate Commerce Commission or Federal Communications Commission.

15. The purchase price of respondents' chinchilla breeding stock includes feed for such animals for 1 year or any other time period unless in fact the feed to be supplied would be sufficient to last for the period represented.

16. Chinchilla Corporation of America is a member of Empress Chinchilla Breeders Cooperative, United Chinchilla Association or Georgia State Chamber of Commerce.

17. Bank financing for the purchase of respondents' chinchilla breeding stock is available because financial institutions recognize the great potential of the chinchilla business.

B. 1. Misrepresenting, in any manner, the assistance, training, services, or advice supplied by respondents to purchasers of their chinchilla breeding stock.

2. Misrepresenting, in any manner, the earnings or profits to purchasers or reproduction capacity of any chinchilla breeding stock.

C. Failing to deliver a copy of this order to cease and desist to all present and future salesmen and other persons engaged in the sale of respondents' products or services and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: March 9, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-4295; Filed, Apr. 8, 1970; 8:45 a.m.]

[Docket C-1705]

PART 13—PROHIBITED TRADE PRACTICES

Marriello Fabrics, Inc., and Michael J. Marriello

Subpart—Furnishing false guaranties: § 13.1053 *Furnishing false guaranties:* 13.1053–80 Textile Fiber Products Identification Act. Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108–40 Federal Trade Commission Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185–80 Textile Fiber Products Identification Act; 13.1185–90 Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212–80 Textile Fiber Products Identification Act; 13.1212–90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852–70 Textile Fiber Products Identification Act; 13.1852–80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2–5, 54 Stat. 1128–1130, 72 Stat. 1717; 15 U.S.C. 45, 68, 70) [Cease and desist order, Marriello Fabrics, Inc., et al., New York, N.Y., Docket C-1705, Mar. 10, 1970]

In the Matter of Marriello Fabrics, Inc., a Corporation, and Michael J. Marriello, Individually and as an Officer of Said Corporation

Consent order requiring a New York City manufacturer of wool and textile garments to cease misbranding its wool and textile fiber products, deceptively invoicing, falsely guaranteeing its textile fiber products, and failing to maintain required records.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Marriello Fabrics, Inc., a corporation, and its officers, and Michael J. Marriello, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying any textile fiber product as to the name or amount of constituent fibers contained therein.

2. Failing to affix labels to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

3. Setting forth words or terms on labels in disclosing required information, in abbreviated form except as permitted by Rule 33(d) of said rules and regulations.

4. Failing to set out all parts of the required information conspicuously and separately on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser.

B. Failing to maintain and preserve for at least 3 years proper records showing the fiber content of textile fiber products manufactured by them, as required by section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the regulations promulgated thereunder.

It is further ordered, That respondents Marriello Fabrics, Inc., a corporation, and its officers, and Michael J. Marriello, individually and as an officer of said corporation, and the respondents' representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced.

It is further ordered, That respondents Marriello Fabrics, Inc., a corporation, and its officers, and Michael J. Marriello, individually and as an officer of said corporation, and the respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce of wool products as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

A. Misbranding wool products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to clearly affix to, or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Marriello Fabrics, Inc., a corporation, and its officers, and Michael J. Marriello, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of fabrics or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto, or in any other manner.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: March 10, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-4296; Filed, Apr. 8, 1970; 8:46 a.m.]

[Docket C-1706]

PART 13—PROHIBITED TRADE PRACTICES

Memblatt & Haas Textile Co. Inc. and Stephen Memblatt

Subpart—Importing, selling, or transporting flammable wear: § 13.1060 *Importing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) [Cease and desist order, Memblatt & Haas Textile Co. Inc., et al., New York, N.Y., Docket C-1706, Mar. 10, 1970]

In the Matter of Memblatt & Haas Textile Co. Inc., a Corporation, and Stephen Memblatt, Individually and as an Officer of Said Corporation

Consent order requiring a New York City distributor of various fabrics and textile materials to cease marketing dangerously flammable products including a sheer fabric designated as "Spangle."

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Memblatt & Haas Textile Co. Inc., a corporation, and its officers, and Stephen Memblatt, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or deliverying after sale or shipment in commerce, any fabric, product or related material as the terms "commerce," "fabric," "product," and "related material" are defined in the Flammable Fabrics Act as amended, which fabric, product, or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim special report in writing setting forth the respondents' intention as to compliance with this order. This interim special report shall also advise the Commission fully and specifically concerning the identity of the fabric which gave rise to the compliant, (1) the amount of such fabric in inventory, (2) any action taken to notify customers of the flammability of such fabric and the results thereof and (3) any disposition of such fabric since August 8, 1969. Such report shall further inform the Commission whether respondents have in inventory any fabric, product, or related material having a plain surface and made of silk, rayon and acetate, nylon and acetate, rayon or cotton, or combinations thereof in a weight of 2 ounces or less per square yard or with a raised fiber surface and made of cotton or rayon or combinations thereof. Respondents will submit samples of any such fabric, product or related material with this report. Samples of the fabric, product or related material shall be of no less than 1 square yard of material.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and

form in which they have complied with this order.

Issued: March 10, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-4297; Filed, Apr. 8, 1970; 8:46 a.m.]

[Docket C-1707]

PART 13—PROHIBITED TRADE PRACTICES

Stanley Pologeorgis, Inc. and Stanley Pologeorgis

Subpart—Furnishing false guaranties: § 13.1053 *Furnishing false guaranties:* 13.1053-35 Fur Products Labeling Act. Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Stanley Pologeorgis, Inc., et al., New York, N.Y., Docket C-1707, Mar. 10, 1970]

In the Matter of Stanley Pologeorgis, Inc., a Corporation, and Stanley Pologeorgis, Individually and as an Officer of Said Corporation

Consent order requiring a New York City manufacturing furrier to cease falsely invoicing and deceptively guaranteeing its fur products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Stanley Pologeorgis, Inc., a corporation, and its officers, and Stanley Pologeorgis, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That Stanley Pologeorgis, Inc., a corporation, and Stanley Pologeorgis, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: March 10, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-4298; Filed, Apr. 8, 1970; 8:46 a.m.]

[Docket C-1708]

PART 13—PROHIBITED TRADE PRACTICES

Sekas Brothers, Inc., et al.

Subpart—Furnishing false guaranties: § 13.1053 *Furnishing false guaranties:* 13.1053-35 Fur Products Labeling Act. Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-30 *Fur Products Labeling Act;* § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Sekas Brothers, Inc., et al., New York, N.Y., Docket C-1708, Mar. 10, 1970]

In the Matter of Sekas Brothers, Inc., a Corporation, and Paul N. Sekas, Gus N. Sekas, and George N. Sekas, Individually and as Officers of said Corporation

Consent order requiring a New York City manufacturing furrier to cease misbranding, falsely invoicing, and deceptively guaranteeing its fur products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Sekas Brothers, Inc., a corporation, and its officers, and Paul N. Sekas, Gus N. Sekas, and George N. Sekas, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artifically colored.

It is further ordered, That respondents Sekas Brothers, Inc., a corporation, and its officers, and Paul N. Sekas, Gus N. Sekas, and George N. Sekas, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: March 10, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-4299; Filed, Apr. 8, 1970; 8:46 a.m.]

[Docket C-1709]

PART 13—PROHIBITED TRADE PRACTICES

Dowd's, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.125 *Limited offers or supply;* § 13.155 *Prices;* 13.155–10 Bait; 13.155–15 Comparative; 13.155–70 Percentage savings; 13.155–80 Retail as cost, wholesale, discounted, etc.; 13.155–100 Usual as reduced, special, etc.; § 13.180 *Quantity.* Subpart—Misrepresenting oneself and goods—Goods: § 13.1720 *Quantity;* § 13.1747 *Special or limited offers;* Misrepresenting oneself and goods—Prices: § 13.1779 *Bait;* § 13.1785 *Comparative;* § 13.1820 *Retail as cost, wholesale, etc., or discounted;* § 13.1825 *Usual as reduced or to be increased.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Dowd's Inc., et al., Washington, D.C., Docket C-1709, Mar. 11, 1970]

In the Matter of Dowd's, Inc., a Corporation, Doing Business as Dowd's Television & Appliances, and Robert T. Dowd, Individually and as an Officer of the Said Corporation, and James Wilder, Individually

Consent order requiring a Washington, D.C., retailer of electrical appliances to cease using bait and switch tactics, false pricing and savings claims, failing to maintain records adequate to justify its pricing claims, and deceptively using the words "No Money Down."

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Dowd's, Inc., a corporation, doing business under its own name or as Dowd's Television & Appliances, or under any other name or names and its officers, and Robert T. Dowd, individually, and as an officer of said corporation, and James Wilder, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of television sets, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of merchandise.

2. Discouraging the purchase of, or disparaging, any products which are advertised or offered for sale.

3. Representing, directly or by implication, that any products are offered for sale when such offer is not a bona fide offer to sell such products.

4. Representing, directly or by implication, that any products are offered for sale, unless sufficient quantities of such products are available in stock to satisfy reasonably anticipated demands: *Provided, however*, That items available only in limited supply may be advertised if such advertising clearly and conspicuously discloses the number of units in stock and the duration of the offer.

5. Using pictorial representations in advertising to represent that respondents' merchandise contains certain features or construction which are not in fact supplied by respondent for the price advertised.

6. Misrepresenting directly or by implication, that merchandise advertised and offered for sale by respondents is of the current model year.

7. Using the words "Pre-Inventory Clearance", "Labor Day Sale", or any other word or words of similar import or meaning unless the price of such merchandise being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

8. Using the words "Save" or "Savings" or any other word or words of similar import or meaning in conjunction with a stated dollar amount or percentage amount of savings, unless the stated dollar or percentage amount of savings actually represents the difference between the offering price and the actual bona fide price at which such merchandise has been sold or offered for sale on a regular basis to the public by the respondents for a reasonably substantial period of time in the recent regular course of their business.

9. (a) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondents' for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

10. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

11. Failing to maintain adequate records (1) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in paragraphs 7, 8, 9 (a)–(c), and 10 of this order are based, and (2) from which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in paragraphs 7, 8, 9 (a)–(c) and 10 of this order can be determined.

12. Representing, directly or by implication, that any offer is limited in point of time or restricted in any manner, unless the represented limitation or restriction is actually imposed and in good faith adhered to by respondents.

13. Using the words "No Money Down" or any other word or words of similar import or meaning, unless in immediate conjunction therewith, respondents truthfully and nondeceptively describe the category of purchasers to which they will sell their product or products without requiring a down payment.

14. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall, within sixty (60) days

after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: March 11, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-4300; Filed, Apr. 8, 1970; 8:46 a.m.]

[Docket C-1710]

PART 13—PROHIBITED TRADE PRACTICES

Atlee Fabrics, Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-90 Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68) [Cease and desist order, Atlee Fabrics, Inc., et al., New York, N.Y., Docket C-1710, Mar. 18, 1970]

In the Matter of Atlee Fabrics, Inc., a Corporation, and Hy Fuhrman and Mike Kaminer, Individually and as Officers of Said Corporation

Consent order requiring a New York City clothing manufacturer to cease misbranding certain of its wool products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Atlee Fabrics, Inc., a corporation, and its officers, and Hy Fuhrman and Mike Kaminer, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to or place on, each such product a stamp, tag, label or other means of identification correctly showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: March 18, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-4301; Filed, Apr. 8, 1970; 8:46 a.m.]

[Docket No. 8792]

PART 13—PROHIBITED TRADE PRACTICES

Golden Fifty Pharmaceutical Co., Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections:* 13.15-235 Producer status of dealer or seller; 13.15-235(m) Manufacturer; § 13.70 *Fictitious or misleading guarantees;* § 13.75 *Free goods or services;* § 13.125 *Limited offers or supply.* Subpart—Enforcing dealings or payments wrongfully: § 13.-1045 *Enforcing dealings or payments wrongfully.* Subpart—Shipping, for payment demand, goods in excess of or without order: § 13.2195 *Shipping, for payment demand, goods in excess of or without order.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Golden Fifty Pharmaceutical Co., Inc., et al., Chicago, Ill., Docket No. 8792, Mar. 16, 1970]

In the Matter of Golden Fifty Pharmaceutical Co., Inc., a Corporation, and Michael Posen, Individually and as an Officer of Said Corporation

Order requiring a Chicago, Ill., distributor of a vitamin and mineral preparation to cease falsely advertising that respondent manufactures its vitamin-mineral products, that additional quantities may be obtained "free," that offers are made only to a limited customer group, deceptively guaranteeing its products, shipping unordered merchandise, or attempting to collect therefor when recipient has refused delivery.

The order to cease and desist, is as follows:

It is ordered, That respondents Golden Fifty Pharmaceutical Co., Inc., a corporation, and its officers, and Michael Posen, individually and as an officer of said corporation, and its agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated "Golden 50 Tabulets", or any food, drug, device or cosmetic do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing the dissemination of, by means of the U.S. mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which:

(a) Represents directly or by implication that respondents are manufacturers of vitamin and/or mineral preparations or maintain laboratory facilities concerned with the formulation, testing or performance of vitamin and/or mineral preparations.

(b) Represents directly or by implication that any product is offered free or under any other terms when the offer is used as a means of enrolling those who accept the offer in a plan whereby additional supplies of the product are shipped at an additional charge unless all of the conditions of the plan are disclosed clearly and conspicuously and within close proximity to the "free" or other offer.

(c) Represents directly or by implication that an offer is made without "further obligation," or with "no risk," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer when in fact there is an obligation incurred by the recipient.

(d) Represents directly or by implication that an offer is made to only a limited customer group or for only a limited period of time when no such limitations are imposed by respondents.

(e) Represents directly or by implication that such products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which said guarantor will perform thereunder are clearly and conspicuously disclosed therewith.

(f) Represents directly or indirectly that any product or combination of products identified, described or specified, directly or by implication, is being offered for sale, as a "gift" or otherwise, unless such offer does contain the items as specified, described or otherwise identified.

(g) Represents directly or indirectly that any product or combination of products which are offered for sale, "free," as a "gift," or otherwise is or are of regular commercial size when such product or products are of "trial," "sample," or otherwise less than regular commercial size.

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' products in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations or misrepresentations prohibited by Paragraph 1 hereof.

It is further ordered, That respondents Golden Fifty Pharmaceutical Co., Inc., a corporation, and its officers, and Michael Posen, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of "Golden 50 Tabulets" or other products, in commerce, as

"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Shipping or sending any merchandise to any person without the prior authorization or prior consent of the person to whom such merchandise is sent and attempting, or causing to attempt, the collection of the price thereof.

2. Shipping or sending any merchandise to any person and attempting, or causing to attempt, the collection of the price thereof when a notification of refusal of such merchandise, or a notification of cancellation for any further shipments of merchandise, has been sent by such persons and received by respondents.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

By "Decision and Order" further order requiring report of compliance is as follows:

It is further ordered, That respondents, Golden Fifty Pharmaceutical Co., Inc., a corporation, and Michael Posen, individually and as an officer of said corporation shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Issued: March 16, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-4302; Filed, Apr. 8, 1970; 8:46 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 70-82]

PART 11—PACKING AND STAMPING; MARKING; TRADEMARKS AND TRADE NAMES; COPYRIGHTS

Marking on Containers of Articles Repackaged in the United States

MARCH 26, 1970.

There was published in the FEDERAL REGISTER for October 2, 1969 (34 F.R. 15360), a notice of a proposal to amend § 11.10(a) of the Customs Regulations to provide that in certain circumstances an exception from marking under 19 U.S.C. 1304(a)(3)(D) may be authorized in cases where imported articles are repacked after release from customs custody in containers which will reach the ultimate purchaser in the United States unopened and which are marked to indicate the country or origin. Written data, views, or arguments submitted in response to that notice have been given careful consideration.

Since the deferral of liquidations of entries of merchandise which are to be repacked in accordance with the proposal will place an additional burden on customs officers, it has been decided to provide that liquidation may not be deferred for more than 60 days unless the district director of customs authorizes such a deferral upon written application.

Accordingly, § 11.10(a) of the Customs Regulations is amended by adding after the second sentence thereof the following: "An exception under section 304(a)(3)(D) may also be authorized, in the discretion of the district director, if an article is to be repacked by the importer, after release from customs custody, in a container marked to indicate the origin of the contents to an ultimate purchaser in the United States, provided the importer arranges for supervision of the marking of the containers by customs officers at the importer's expense or such verification as may be necessary, by certification and the submission of a sample or otherwise, of the marking prior to liquidation of the entry. The liquidation of such entries may be deferred for a period of not more than 60 days from the date that a request for repacking is granted. Extensions of the 60-day deferral period may be granted by the district director in his discretion upon written application by the importer."

(Sec. 304, 46 Stat. 687, as amended; 19 U.S.C. 1304)

Since this amendment grants an exemption not previously provided in the regulations, good cause is found for dispensing with the requirement for a delayed effective date as provided in 5 U.S.C. 553(d).

Effective date. This amendment shall become effective on the date of its publication in the FEDERAL REGISTER.

[SEAL] EDWIN F. RAINS, *Acting Commissioner of Customs.*

Approved: March 26, 1970.

EUGENE T. ROSSIDES, *Assistant Secretary of the Treasury.*

[F.R. Doc. 70-4355; Filed, Apr. 8, 1970; 8:51 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

ADHESIVES; DEFOAMING AGENTS USED IN THE MANUFACTURE OF PAPER AND PAPERBOARD

Correction

In F.R. Doc. 70-3730, appearing at page 5220 of the issue for Saturday, March 28, 1970, the following correction should be made:

The third line of the first paragraph is corrected to read: "(FAP 0B2484) filed by FMC Corp., 633".

PART 121—FOOD ADDITIVES

Subpart A—Definitions and Procedural and Interpretative Regulations

FOOD ADDITIVE STATUS OPINION LETTERS; STATEMENT OF POLICY

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-88, as amended; 21 U.S.C. 321(s), 348, 371(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), Part 121 is amended by adding the following statement of policy to Subpart A:

§ 121.11 Food additive status opinion letters; statement of policy.

(a) Over the years the Food and Drug Administration has given informal written opinions to inquirers as to the safety of articles intended for use as components of, or in contact with, food. Prior to the enactment of the Food Additives Amendment of 1958 (Public Law 85-929; Sept. 6, 1958), these opinions were given pursuant to section 402(a)(1) of the Federal Food, Drug, and Cosmetic Act, which reads in part: "A food shall be deemed to be adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to health;".

(b) Since enactment of the Food Additives Amendment, the Food and Drug Administration has advised such inquirers that an article:

(1) Is a food additive within the meaning of section 201(s) of the Act; or

(2) Is generally recognized as safe (GRAS); or

(3) Has prior sanction or approval under that amendment; or

(4) Is not a food additive under the conditions of intended use.

(c) In the interest of the public health, such articles which have been considered in the past by the Food and Drug Administration to be safe under the provisions of section 402(a)(1), or to be generally recognized as safe for their intended use, or to have prior sanction or approval, or not to be food additives under the conditions of intended use, must be reexamined in the light of current scientific information and current principles for evaluating the safety of food additives if their use is to be continued.

(d) Because of the time span involved, copies of many of the letters in which the Food and Drug Administration has expressed an informal opinion concerning the status of such articles may no longer be in the file of the Food and Drug Administration. In the absence of information concerning the names and uses made of all the articles referred to in such letters, their safety of use cannot be reexamined. For this reason all food additive status opinions of the kind

described in paragraph (c) of this section given by the Food and Drug Administration are hereby revoked.

(e) The prior opinions of the kind described in paragraph (c) of this section will be replaced by qualified and current opinions if the recipient of each such letter forwards a copy of each to the Department of Health, Education, and Welfare, Food and Drug Administration, Bureau of Foods, Pesticides, and Product Safety, Office of Compliance, 200 C Street SW., Washington, D.C. 20204, along with a copy of his letter of inquiry, within 60 days after the date of publication of this section in the FEDERAL REGISTER.

(f) This section does not apply to food additive status opinion letters pertaining to articles that were considered by the Food and Drug Administration to be food additives nor to articles included in regulations in this Part 121 if the articles are used in accordance with the requirements of such regulations.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–88, as amended; 21 U.S.C. 321(s), 348, 371(a))

Dated: April 2, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-4303; Filed, Apr. 8, 1970; 8:46 a.m.]

SUBCHAPTER C—DRUGS

PART 141c—CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

PART 148n—OXYTETRACYCLINE

Certain Tetracycline-Nystatin, Oxytetracycline-Nystatin, and Demethylchlortetracycline-Nystatin Combination Preparations for Oral Administration; Further Postponement of Effective Date

An order was published in the FEDERAL REGISTER of November 13, 1969 (34 F.R. 18161), to become effective in 40 days, amending Parts 141c, 146c, and 148n, of the antibiotic drug regulations to repeal provisions for certification of combination drugs containing tetracycline-nystatin, oxytetracycline-nystatin, and demethylchlortetracycline-nystatin for oral use.

Having received objections and a request for an extension of the effective date to allow for the submission of additional data, the Commissioner of Food and Drugs postponed the effective date of the order to March 23, 1970. The postponement document was published in the FEDERAL REGISTER of December 31, 1969 (34 F.R. 20427).

Additional material has been received and is being reviewed; however, the Commissioner concludes that the effective date of the order should be further postponed to allow time for completion of review of the objections and the material submitted. When this review is completed, the Commissioner will announce in the FEDERAL REGISTER whether or not requests for hearing with reasonable grounds have been received. Therefore, the effective date of the order of November 13, 1969 (34 F.R. 18161), is hereby postponed pending said review.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050–51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: March 30, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-4304; Filed, Apr. 8, 1970; 8:46 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER J—BRIDGES

[CGFR 70-18]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Revocation of Regulations for Removed Bridges

1. The Commandant has been advised that several bridges, for which special operation regulations have been prescribed, have been removed. Accordingly, the special regulations that governed their operation are no longer required and the following sections are revoked: §§ 117.175(d), 117.245(h)(2), 117.675, 117.712(h)(1), 117.714(c)(4), and 117.770(b)(1)(iii).

2. In addition, other bridges which are included in §§ 117.770(b)(2) and 117.810(f)(7) and (f)(8) have been removed.

a. Accordingly, § 117.770(b)(2) is revised to read as follows:

§ 117.770 Willapa Harbor, and navigable tributaries, Washington; bridges.

* * * * *

(b) * * *

(2) Constant attendance by drawtenders is not required at the State highway bridges across the North Fork of Willapa River at Raymond and the Naselle River about 6 miles downstream from Naselle. Vessels requiring openings of these bridges shall give advance notice of not more than 2 hours for openings between 8 a.m. and 5 p.m. on all days except Saturdays, Sundays, and legal holidays, and advance notice of not more than 8 hours for openings at any other time. The owner of the bridges shall keep conspicuously posted on both the upstream and downstream sides, in such a manner that they can be easily read at any time, copies of the regulations of this section, together with notices stating exactly how the bridge operators may be reached to obtain openings of the bridges, including names, addresses, and telephone numbers.

(b) Sections 117.810 (f)(7) and (f)(8) are revised to read as follows:

§ 117.810 Navigable Waters in the State of Washington; bridges where constant attendance of drawtenders is not required.

* * * * *

(f) * * *

(7) Chehalis River; Union Pacific Railroad Co. bridges at South Montesano. The draw shall be opened promptly on signal from 5 a.m. to 9 p.m. From 9 p.m. to 5 a.m. 8 hours' advance notice required. During freshets a drawtender shall be kept in constant attendance upon the order of the District Commander.

(8) Snake River; Idaho-Washington Department of Highways bridge at Clarkston. The draw need not be opened for the passage of vessels, and paragraphs (b) through (e) of this section shall not apply to this bridge.

(Sec. 5, 28 Stat. 362, as amended, Sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.4(a)(3)(v))

Effective date. This revision shall become effective upon the date of publication in the FEDERAL REGISTER.

Dated: April 2, 1970.

W. J. SMITH,
Admiral, U.S. Coast Guard Commandant.

[F.R. Doc. 70-4334; Filed, Apr. 8, 1970; 8:49 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4786]

[Anchorage 5597]

ALASKA

Partial Revocation of Executive Order No. 9085 of March 4, 1942

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Executive Order No. 9085 of March 4, 1942, which withdrew land for use as an administrative site by the former Alaska Fire Control Service is hereby revoked so far as it affects the following described lands:

COPPER RIVER MERIDIAN

T. 4 N., R. 2 W.,
Sec. 23, E½SW¼, that portion lying south of the centerline of the Glenn Highway.

Containing 26.8 acres at Glennallen, Alaska.

2. Of the above described lands, 2.5 acres comprising the SE¼SE¼SE¼SW¼, have been patented under the Recreation and Public Purposes Act of June 14, 1926, 44 Stat. 471, as amended, 43 U.S.C. § 869 et seq. (1964). The remaining 24.3 acres are public lands withdrawn by Public Land Order 4582 of January 17, 1969, for the determination and protection of the rights of native Aleuts, Eskimos, and Indians of Alaska. These public lands will be open to location for metalliferous minerals at 10 a.m. on May 8, 1970.

Inquiries concerning the public lands should be addressed to the Manager, Land Office, Bureau of Land Management, Anchorage, Alaska 99501.

HARRISON LOESCH,
Assistant Secretary of the Interior.

APRIL 2, 1970.

[F.R. Doc. 70-4314; Filed, Apr. 8, 1970; 8:47 a.m.]

[Public Land Order 4787]

[Idaho 2819]

IDAHO

Partial Revocation of Reclamation Project Withdrawal

By virtue of the authority contained in section 3 of the Act of June 17, 1902, 32 Stat. 388, 43 U.S.C. § 416 (1964), as amended and supplemented, it is ordered as follows:

1. The Departmental Order of March 22, 1919, withdrawing lands for the Mountain Home Project, is hereby revoked so far as it affects the following described land:

BOISE MERIDIAN

T. 2 N., R. 1 E.,
Sec. 10, NE¼SE¼.

The area described contains 40 acres in Ada County.

The land is located approximately 5 miles southwest of Boise, Idaho, and is surrounded by privately owned lands. A major irrigation canal of the area, the New York Canal, borders the tract on the west. Vegetative cover is sagebrush, cheatgrass, and annual weeds. Soils are fine sandy loam over alluvial gravels. The surface is nearly level.

2. At 10 a.m. on May 8, 1970, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on May 8, 1970, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands will be open to location under the U.S. mining laws at 10 a.m. on May 8, 1970. They have been open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Boise, Idaho.

HARRISON LOESCH,
Assistant Secretary of the Interior.

APRIL 2, 1970.

[F.R. Doc. 70-4315; Filed, Apr. 8, 1970; 8:47 a.m.]

[Public Land Order 4788]

[Wyoming 059320]

WYOMING

Modification of Public Land Order No. 2278

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Public Land Order No. 2278 of February 27, 1961, partially revoked by Public Land Order No. 3206 of August 30, 1963, reserving lands for use of the Forest Service as administrative sites, is hereby modified to the extent necessary to open the lands to all forms of appropriation under the public land laws applicable to national forest lands, except under the U.S. mining laws, so far as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN

MEDICINE BOW NATIONAL FOREST

Cold Springs Administrative Site

T. 29 N., R. 75 W.,
Sec. 28, NW¼NE¼.

Mountain Home Administrative Site

T. 12 N., R. 78 W.,
Sec. 17, W½SW¼NE¼.

Fox Creek Park Administrative Site

T. 13 N., R. 78 W.,
Sec. 21, S½SW¼NE¼SE¼, NW¼SE¼SE¼, NW¼SW¼SE¼SE¼, NE¼SW¼SE¼, N½SE¼SW¼SE¼, NW¼SW¼SE¼, E½NE¼SE¼SW¼, E½SE¼NE¼SW¼, S½S½NW¼SE¼, and NW¼SW¼NW¼SE¼.

Centennial Administrative Site

T. 15 N., R. 78 W.,
Sec. 4, SE¼NE¼, NE¼SE¼, E½E½NW¼SE¼, E½E½SW¼NE¼, less 1.52 acres in the Little LaRue Lode M.E. Survey 81.
T. 16 N., R. 78 W.,
Sec. 33, S½SE¼, S½N½SE¼, S½NE¼SW¼, and N½SE¼SW¼.

Spruce Mountain Administrative Site

T. 14 N., R. 79 W.,
Sec. 12, W½NW¼NE¼, W½SW¼NE¼, N½NW¼SE¼, W½NW¼NE¼SE¼, E½NE¼NW¼, and E½SE¼NW¼.

Keystone Administrative Site

T. 14 N., R. 79 W.,
Sec. 21, W½SW¼SE¼NE¼, S½SW¼NE¼, and E½SE¼SE¼NW¼;
Sec. 22, SW¼NE¼NE¼, E½SW¼NE¼, and W½SE¼NE¼.

Brooklyn Lake Administrative Site

T. 16 N., R. 79 W.,
Sec. 10, E½SE¼SE¼ and SE¼SW¼SE¼SE¼;
Sec. 11, W½SW¼SW¼;
Sec. 15, N½NE¼NE¼, NE¼SE¼NE¼NE¼, W½SE¼NE¼NE¼, E½SW¼NE¼NE¼, NW¼SW¼NE¼NE¼, NE¼SE¼NW¼NE¼, and SE¼NE¼NW¼NE¼.

Bow Administrative Site

T. 18 N., R. 80 W.,
Sec. 21, E½NW¼NE¼, W½NE¼NE¼, SE¼NE¼NE¼, E½SE¼NE¼, and NW¼SE¼NE¼;
Sec. 22, S½SW¼NW¼ and NW¼SW¼NW¼.

Brush Creek Administrative Site

T. 16 N., R. 81 W.,
Sec. 17, W½SE¼SW¼, W½E½SE¼SW¼;
Sec. 20, NE¼NW¼.

Kennaday Peak Administrative Site

T. 17 N., R. 81 W.,
Sec. 16, W½NW¼NW¼;
Sec. 17, NE¼NE¼.

Blackhall Mountain Administrative Site

T. 12 N., R. 83 W.,
Sec. 1, W½SW¼SW¼, W½E½SW¼SW¼, SW¼NW¼SW¼;
Sec. 2, SE¼SE¼, SE¼NE¼SE¼, E½SW¼NE¼SE¼.

Jack Creek Administrative Site

T. 15 N., R. 86 W.,
Sec. 18, SW¼SE¼NE¼, SE¼SW¼NE¼, W½NE¼SE¼, E½NW¼SE¼.

Sandstone Administrative Site

T. 13 N., R. 87 W.,
Sec. 9, SE¼SE¼NE¼, NE¼NE¼SE¼;
Sec. 10, N½NW¼SW¼, NW¼NE¼SW¼, S½SW¼NW¼, S½N½SW¼NW¼, SW¼SE¼NW¼, S½NW¼SE¼NW¼.

The areas described aggregate 1,140.98 acres in Albany, Carbon and Converse Counties.

2. At 10 a.m. on May 8, 1970, the lands shall be open to such forms of disposition as may by law be made of national forest lands except appropriation under the U.S. mining laws.

HARRISON LOESCH,
Assistant Secretary of the Interior.

APRIL 2, 1970.

[F.R. Doc. 70-4316; Filed, Apr. 8, 1970; 8:47 a.m.]

[Public Land Order 4789]

[Idaho 2509]

IDAHO

Withdrawal for National Forest Recreation Area

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from appropriation under the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

PAYETTE NATIONAL FOREST

BOISE MERIDIAN

Towsley Springs Recreation Site

T. 21 N., R. 3 W.,
Sec. 13, W½SE¼SE¼NW¼, SW¼NW¼ NE¼SW¼, E½NW¼NE¼SW¼, SW¼ NE¼SW¼, E½NE¼SW¼, W½NW¼ SE¼.

The area described aggregates 62.5 acres in Adams County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

HARRISON LOESCH,
Assistant Secretary of the Interior.

APRIL 2, 1970.

[F.R. Doc. 70-4317; Filed, Apr. 8, 1970; 8:48 a.m.]

[Public Land Order 4790]

[New Mexico 9320]

NEW MEXICO

Withrdawal for Reclamation Project

By virtue of the authority contained in section 3 of the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), as amended and supplemented, it is ordered as follows:

Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Department of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, and reserved for the Cutter Dam Site, Navajo Indian Irrigation Project:

NEW MEXICO PRINCIPAL MERIDIAN

T. 29 N., R. 8 W.,
Sec. 32, S½N½, N½SW¼ and SE¼.

The area described aggregates 400 acres in San Juan County.

All of the mineral rights in the described lands belong to the State of New Mexico.

HARRISON LOESCH,
Secretary of the Interior.

APRIL 2, 1970.

[F.R. Doc. 70-4318; Filed, Apr. 8, 1970; 8:48 a.m.]

[Public Land Order 4791]

[Sacramento 048846]

CALIFORNIA

Withdrawal of Lands for Use in Connection With Tule Lake Wildlife Refuge

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

Subject to valid existing rights, the following described public lands which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, for use in connection with those lands dedicated for wildlife conservation in the Tule Lake National Wildlife Refuge by the Act of September 2, 1964, 78 Stat. 850, 16 U.S.C. § 695–K, and hereafter shall be subject to all laws and regulations applicable thereto:

MOUNT DIABLO MERIDIAN

T. 47 N., R. 3 E.,
Sec. 1, lot 1, SE¼NE¼ and E½SE¼;
Sec. 12, lots 1 and 5, and S½NW¼.

The areas described aggregate 280.12 acres in Siskiyou County.

HARRISON LOESCH,
Assistant Secretary of the Interior.

APRIL 2, 1970.

[F.R. Doc. 70-4319; Filed, Apr. 8, 1970; 8:48 a.m.]

[Public Land Order 4792]

[Oregon 5632 (Wash.)]

WASHINGTON

Withdrawal for National Forest Campground

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Subject to valid existing rights, the following described lands are hereby withdrawn from appropriation under the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws in aid of programs of the Department of Agriculture:

SNOQUALMIE NATIONAL FOREST

WILLAMETTE MERIDIAN

Deep Creek Campground

T. 15 N., R. 11 E.,
Sec. 36, E½NE¼NE¼, NE¼SE¼NE¼.
T. 15 N., R. 12 E. (unsurveyed),
Sec. 32, a tract of land which, when surveyed, will be located within the fractional N½, more particularly described as follows:
Beginning at the NW¼ corner, thence south 30 chains, thence east 10 chains, thence north 30 chains, thence west 10 chains to point of beginning.

The area described aggregates approximately 60 acres in Yakima County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their minerals or vegetative resources other than the mining laws.

HARRISON LOESCH,
Assistant Secretary of the Interior.

APRIL 2, 1970.

[F.R. Doc. 70-4320; Filed, Apr. 8, 1970; 8:48 a.m.]

[Public Land Order 4793]

[Montana 9915, 10135]

MONTANA

Addition to National Forest

By virtue of the authority vested in the President by section 13 of the Act of June 28, 1934 (48 Stat. 1274; 43 U.S.C. 315–1), and section 1 of the Act of July 20, 1939 (53 Stat. 1071; 16 U.S.C. 471b), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

The boundaries of the Gallatin National Forest are hereby extended to include the following described public lands and, subject to valid existing rights, the lands are hereby added to and made a part of said forest and hereafter shall be subject to all laws and regulations applicable thereto:

PRINCIPAL MERIDIAN

T. 2 N., R. 5 E.,
Sec. 11, E½NE¼;
Sec. 24, lots 1 to 4, inclusive, W½E½, NW¼, N½SW¼;
Sec. 25, lots 1 and 2.
T. 3 N., R. 5 E.,
Sec. 4, lots 6 and 7, E½SW¼, SE¼;
Secs. 9 and 15.
T. 1 S., R. 6 E.,
Sec. 4;
Sec. 5, lots 1 to 6, inclusive;
Sec. 9, NE¼NW¼, SE¼SW¼, SE¼;
Sec. 21, lots 1 to 4 inclusive, 7 and 8;
Sec. 34, lot 3.
T. 1 N., R. 6 E.,
Sec. 5;
Sec. 6, lots 1 and 2;
Sec. 31, lots 6 and 7, N½SE¼.
T. 2 N., R. 6 E.,
Sec. 29, SW¼SW¼;
Sec. 30, lot 4, S½SE¼;
Sec. 31, E½SE¼;
Sec. 32, W½NW¼, NW¼SW¼, S½S½;
Sec. 33, SW¼SW¼.
T. 1 N., R. 7 E.,
Sec. 20, E½E½.
T. 4 S., R. 3 E.,
Sec. 24, SE¼SW¼, E½SE¼, SW¼SE¼.
T. 4 S., R. 4 E.,
Sec. 2, S½NE¼;
Sec. 8, SW¼NE¼, E½SW¼, SE¼.

The areas described aggregate 5,779.61 acres in Gallatin County.

HARRISON LOESCH,
Assistant Secretary of the Interior.

APRIL 2, 1970.

[F.R. Doc. 70-4321; Filed, Apr. 8, 1970; 8:48 a.m.]

[Public Land Order 4794]

[Montana 10680]

MONTANA

Addition of Land to UL Bend National Wildlife Refuge

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

Subject to valid existing rights, the following described public land, which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, and reserved as an addition to, and for use in conjunction with those lands withdrawn by Public Land Order No. 4588 of March 25, 1969, for the UL Bend National Wildlife Refuge:

PRINCIPAL MERIDIAN, MONTANA

T. 22 N., R. 31 E.,
Sec. 6, SE¼NW¼.

The area described aggregates 40 acres in Phillips County.

HARRISON LOESCH,
Assistant Secretary of the Interior.

APRIL 2, 1970.

[F.R. Doc. 70-4322; Filed, Apr. 8, 1970; 8:48 a.m.]

[Public Land Order 4795]

[Nevada 3756]

NEVADA

Addition to Ruby Lake National Wildlife Refuge

By virtue of the authority vested in the President and pursuant to Executive Order 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

Subject to valid existing rights, the following described lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, and reserved as an addition to the Ruby Lake National Wildlife Refuge:

MOUNT DIABLO MERIDIAN

T. 26 N., R. 57 E.,
Sec. 14, NW¼SW¼;
Sec. 22, SE¼SE¼;
Sec. 27, E½NE¼;
Sec. 34, W½E½.
T. 27 N., R. 57 E.,
Sec. 24, N½SE¼, SW¼SE¼.

The areas described aggregate 440 acres in Elko and White Pine Counties.

HARRISON LOESCH,
Assistant Secretary of the Interior.

APRIL 2, 1970.

[F.R. Doc. 70-4323; Filed, Apr. 8, 1970; 8:48 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

Tewaukon National Wildlife Refuge, N. Dak.

PART 33—SPORT FISHING

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

TEWAUKON NATIONAL WILDLIFE REFUGE

Sport fishing on the Tewaukon National Wildlife Refuge, N. Dak., is permitted only on the areas designated by signs as open to fishing. These open areas are Lake Tewaukon and Mann Lake, comprising 1,164 acres, and are shown on maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from May 2, 1970, through September 30, 1970, daylight hours only.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33, and are effective through September 30, 1970.

HERBERT G. TROESTER,
Refuge Manager, Tewaukon National Wildlife Refuge, Cayuga, N. Dak.

MARCH 31, 1970.

[F.R. Doc. 70-4338; Filed, Apr. 8, 1970; 8:49 a.m.]

PART 33—SPORT FISHING

Holla Bend National Wildlife Refuge, Ark., and Delta National Wildlife Refuge, La.

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

ARKANSAS

HOLLA BEND NATIONAL WILDLIFE REFUGE

Sport fishing is permitted on all waters of Holla Bend National Wildlife Refuge. Sport fishing shall be in accordance with all applicable State and Federal regulations covering the fishing, subject to the following special conditions:

(1) Fishing is permitted only during the period April 1 through September 30, daylight hours only.

The provisions of this special regulation supplement the regulations which govern sport fishing on wildlife refuges, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1970.

C. EDWARD CARLSON,
Regional Director, Bureau of Sport Fisheries and Wildlife.

APRIL 1, 1970.

[F.R. Doc. 70-4324; Filed, Apr. 8, 1970; 8:48 a.m.]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1014-A]

PART 1033—CAR SERVICE

St. Louis Southwestern Railway Co. Authorized To Operate Over Trackage of Missouri-Kansas-Texas Railroad Co.

APRIL 3, 1970.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 3d day of April 1970.

Upon further consideration of Service Order No. 1014 (33 F.R. 17350, 34 F.R. 9033), and god cause appearing therefor:

It is ordered, That:

Section 1033.1014 *St. Louis Southwestern Railway Co. authorized to operate over trackage of Missouri-Kansas-Texas Railroad Co.* be, and it is hereby, vacated and set aside.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That this order shall become effective at 11:59 p.m., April 3, 1970; that copies of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of the order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 70-4351; Filed, Apr. 8, 1970; 8:51 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Parts 2, 5, 9]

PARK REGULATIONS

Notice of Proposed Rule Making

Pursuant to the authority contained in section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3), it is proposed to amend or revise the General Park Regulations of Parts 2, 5, and 9 of Title 36, as set forth below.

The primary purposes of these changes are to further restrict the use of devices that produce noise in park areas, to prohibit the gift or sale of alcoholic beverages to minors and the possession of alcoholic beverages by minors, to broaden the prohibition against tampering, contained in § 2.29, to include tampering and unlawful possession of all personal property, and to revoke Part 9, referring to the National Park Trust Fund Board which has been abolished. Sections 2.8, 2.11, and 2.13 are being changed to improve their clarity and correct minor errors.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments to the Director, National Park Service, Department of the Interior, Washington, D.C. 20240, within 30 days of the publication of this notice in the FEDERAL REGISTER.

1. Part 2 of Title 36 is amended as follows:

* * * * *

§ 2.3 Audio devices.

(a) The operation or use of any audio device including a radio, television set, musical instrument, or a device producing noise such as an electric generating plant, a motor vehicle, a motorized toy, or other equipment driven by a motor or engine in such a manner or at such a time so as to unreasonably annoy or endanger persons in campgrounds, picnic areas, lodges, or at other public places or gatherings is prohibited.

(b) The operation or use of a public address system, whether fixed, portable, or vehicle mounted, on lands, waters, or highways, is prohibited, except when such use or operation is in connection with a public gathering or special event for which a permit has been issued in accordance with § 2.21 or 2.27.

* * * * *

§ 2.8 Dogs, cats and other pets.

* * * * *

(b) Pets are prohibited in public eating places and food stores, and on designated swimming beaches. The Superintendent may also designate, by the posting of appropriate signs, other portions of the park area where pets are not permitted. This paragraph shall not apply to guide dogs.

* * * * *

§ 2.11 Firearms, traps, and other weapons.

(a) In natural and historical areas and national parkways, the use of a trap, seine, hand-thrown spear, net (except a landing net), firearm (including an air or gas powered pistol or rifle), blow gun, bow and arrow or crossbow, or any other implement designed to discharge missiles in the air or under the water which is capable of destroying animal life is prohibited. The possession of such object or implement is prohibited unless it is (1) unloaded and (2) cased or otherwise packed in such a way as to prevent its use while in the park areas.

* * * * *

§ 2.13 Fishing.

* * * * *

(j) * * *

(2) Fishing in fresh waters with a net, seine, trap, spear, or in any manner other than by hook and line with the rod or line being held in the hand, is prohibited except as provided under special regulations.

(3) Fishing in fresh waters for merchandise or profit is prohibited except as provided under special regulations.

* * * * *

The title of § 2.16 and the section are revised to read as follows:

§ 2.16 Intoxication; drug incapacitation; possession of alcohol by minors.

(a) Entering or remaining in a park area when manifestly under the influence of alcohol, narcotics or other drug, to a degree that may endanger oneself or other persons or property, or unreasonably annoy persons is prohibited.

(b) Except where State laws prescribe a lower minimum age, the sale or gift of an alcoholic beverage to a person under 21 years of age is prohibited. (See also § 5.2(a) of this chapter.)

(c) Except where State laws prescribe a lower minimum age, possession of alcoholic beverages by persons under 21 years of age is prohibited.

* * * * *

The title of § 2.29 and the section are revised to read as follows:

§ 2.29 Tampering and unlawful possession.

Tampering with, possessing, or attempting to tamper with or possess personal property of any kind, or entering or going upon, moving or manipulating any of the parts or components of any such personal property, or starting or setting the same in motion, except when such property is under one's lawful control or possession, is prohibited.

* * * * *

Part 5 of Title 36 is amended as follows:

§ 5.2 Alcoholic beverages; sale of intoxicants.

(a) The sale of alcoholic, spirituous, vinous, or fermented liquor, containing more than 1 percent of alcohol by weight, shall conform with all applicable Federal, State, and local laws and regulations. (See also § 2.16 of this chapter.)

Part 9 [Revoked]

Part 9 of Title 36 is revoked.

Dated: April 2, 1970.

GEORGE B. HARTZOG, Jr.,
Director,
National Park Service.

[F.R. Doc. 70-4325; Filed, Apr. 8, 1970; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 917]

HANDLING OF FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Notice of Proposed Rule Making

Consideration is being given to the following proposal submitted by the Plum Commodity Committee, established under the amended marketing agreement and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

It is proposed that current pack regulation for California plums (§ 917.372 Plum Reg. 1; 31 F.R. 7241) be replaced by a new container and pack regulation reading as follows:

§ 917.419 Plum Regulation 5.

(a) *Order.* On and after May 15, 1970, no handler shall ship any package or container of any variety of plums except in accordance with the following terms and conditions:

(1) Such plums, when shipped in closed packages or containers, shall conform to the requirements of standard pack;

(2) The diameters of the smallest and largest plums in any individual package or container shall not vary more than one-fourth (¼) inch: *Provided,* That a total of not more than five (5) percent, by count, of the plums in any package

or container may fail to meet this requirement;

(3) Each package or container of plums shall bear on one outside end, in plain sight and in plain letters, the name of the variety if known or, when the variety is not known, the words "unknown variety";

(4) Each package or container of plums shall bear on one outside end, in plain sight and in plain letters, the size description of the contents which description shall conform to the following, as applicable:

(i) When packed in four-basket crates, the size shall be indicated in accordance with the arrangement of the plums in the top layer of the baskets, such as 5 x 5, 4 x 5, 3 x 4 x 5, etc.

(ii) When packed in face and fill packs in cartons or lug boxes, the size shall be indicated in accordance with the number of rows in the face, such as "6 row", "8 row", etc.

(iii) When packed or filled in other packages or containers, the size shall be indicated in accordance with the number of plums in the package or container, or by the equivalent size designation for such plums when packed in four-basket crates.

(b) Subject to the provisions hereinafter set forth in paragraph (c) of this section, any package or container of any variety of plums may be marked with the words "tight-fill" only if such package or container and the contents thereof meet the following requirements:

(1) The depth of each container shall be equal to at least three times the average diameter of the plums therein as determined by measuring representative fruits;

(2) All container faces shall be composed of at least two complete layers of wax- or resin-treated corrugated paperboard which treatment shall consist of coating both surfaces of each layer with wax or resin, or impregnating at least the corrugating medium in each layer with wax or resin. The material comprising each bottom layer and one layer of both sides and both ends of each container shall have been marked or certified as having a Mullen or Cady test strength of at least 275 pounds, and the material in all other components of each container shall have been marked or certified as having a Mullen or Cady test strength of at least 250 pounds;

(3) Each container shall be well filled and the plums therein shall have been well settled by vibration, according to approved and recognized methods;

(4) Each container shall have a top pad containing wood excelsior or redwood bark. Such pads that contain wood excelsior shall weigh at least 160 pounds per 1,000 square feet of pad and such pads that contain redwood bark shall weigh at least 200 pounds per 1,000 square feet of pad; and

(5) The cover shall be firmly seated against the lower half of each container and firmly fastened to it.

(c) Ten percent of the packages or containers in any lot may fail to meet the requirements of paragraph (b) of this section.

(d) When used herein, "standard pack" and "diameter" shall have the respective meanings set forth in the U.S. Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520–51.1538), and all other terms shall have the same meaning as when used in the amended marketing agreement and order.

(e) Plum Regulation 1 (31 F.R. 7241) is hereby terminated at the effective time hereof.

All persons who desire to submit written data, views, or arguments, for consideration in connection with the proposed regulation shall file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: April 3, 1970.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-4335; Filed, Apr. 8, 1970; 8:49 a.m.]

[7 CFR Part 1094]

MILK IN NEW ORLEANS, LA., MARKETING AREA

Notice of Proposed Suspension of Certain Provisions of the Order

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of certain provisions of the order regulating the handling of milk in the New Orleans, La., marketing area is being considered for the period beginning April 1, 1970, until action may be taken on the basis of a hearing record.

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file the same with the Hearing Clerk, Room 112–A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 5 days from the date of publication of this notice in the FEDERAL REGISTER. All documents filed should be in quadruplicate.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

In addition to the written submissions, evidence on this issue presented at the public hearing to be held April 9, 1970, at New Orleans, La., and April 10, 1970, at Jackson, Miss., will be considered in deciding the need for this proposed suspension.

The provisions proposed to be suspended are as follows:

1. Section 1094.44(c).

2. In the introductory text of § 1094.44(e) preceding subparagraph (1) the words: "located not more than 350 miles by the shortest highway distance from the city hall in New Orleans, La., as determined by the market administrator,".

This proposed suspension would remove the rule which requires Class I classification of all fluid milk products transferred from a pool plant to a nonpool plant located more than 350 miles from the city hall in New Orleans, La. It would permit such transfers to be classified according to use in the same manner as now provided for transfers to nonpool plants located within 350 miles of New Orleans.

This suspension was requested by Dairymen, Inc., a cooperative representing most of the producers on the market. The cooperative states that the efficient utilization of milk in excess of the Class I needs of the market will require transfers during April 1970 and succeeding months to plants located more than 350 miles from New Orleans, La.

Signed at Washington, D.C., on April 6, 1970.

ROY W. LENNARTSON,
Administrator.

[F.R. Doc. 70-4336; Filed, Apr. 8, 1970; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 81]

AIR QUALITY CONTROL REGIONS

Notice of Proposed Designation of Portland Interstate Air Quality Control Region and Notice of Consultation With Appropriate State and Local Authorities

Pursuant to authority delegated by the Secretary and redelegated to the Commissioner of the National Air Pollution Control Administration (33 F.R. 9909), notice is hereby given of a proposal to designate the Portland Interstate Air Quality Control Region (Oregon-Washington) as set forth in the following new § 81.51 which would be added to Part 81 of Title 42, Code of Federal Regulations. It is proposed to make such designation effective upon republication.

Interested persons may submit written data, views, or arguments in triplicate to the Office of the Commissioner, National Air Pollution Control Administration, Parklawn Building, Room 17–82, 5600 Fishers Lane, Rockville, Md. 20852. All relevant material received not later than 30 days after the publication of this notice will be considered.

Interested authorities of the States of Oregon and Washington and appropriate local authorities, both within and without the proposed region, who are affected

by or interested in the proposed designation, are hereby given notice of an opportunity to consult with representatives of the Secretary concerning such designation. Such consultation will take place at 10 a.m., April 21, 1970, in the West Courtroom, Sixth Floor, U.S. Courthouse (New), 620 Southwest Main Street, Portland, Oreg. 97207.

Mr. Doyle J. Borchers is hereby designated as Chairman for the consultation. The Chairman shall fix the time, date, and place of later sessions and may convene, reconvene, recess, and adjourn the sessions as he deems appropriate to expedite the proceedings.

State and local authorities wishing to participate in the consultation should notify the Office of the Commissioner, National Air Pollution Control Administration, Parklawn Building, Room 17-82, 5600 Fishers Lane, Rockville, Md. 20852 of such intention at least 1 week prior to the consultation. A report prepared for the consultation is available upon request to the Office of the Commissioner.

In Part 81 a new § 81.51 is proposed to be added to read as follows:

§ 81.51 Portland Interstate Air Quality Control Region.

The Portland Interstate Air Quality Control Region (Oregon-Washington) consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302 (f) of the Clean Air Act, 42 U.S.C. 1857h (f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Oregon:

Benton County.	Marion County.
Clackamas County.	Multnomah County.
Columbia County.	Polk County.
Lane County.	Washington County.
Linn County.	Yamhill County.

In the State of Washington:

Clark County.	Cowlitz County.

This action is proposed under the authority of sections 107(a) and 301(2) of the Clean Air Act, section 2, Public Law 90-148, 81 Stat. 490, 504, 42 U.S.C. 1857c-2(a), 1857g(a).

Dated: April 2, 1970.

JOHN H. LUDWIG,
Acting Commissioner, National Air Pollution Control Administration.

[F.R. Doc. 70-4248; Filed, Apr. 8, 1970; 8:45 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1905]

STATEWIDE "FAIR" PLANS

Notice of Proposed Rule Making

Pursuant to title XII of the National Housing Act (added by the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb—1749bbb-21), 5 U.S.C. 553, and delegation of authority by the Secretary of Housing and Urban Development (34 F.R. 2680, Feb. 27, 1969), the Federal Insurance Administrator proposes to issue the following regulation pertaining to Part A of the Act (12 U.S.C. 1749bbb-3—1749bbb-6) as a new Part 1905 of Chapter VII of Title 24.

The purpose of this new part is to promulgate in regulatory form, with minor revisions and clarifications, the "Guidelines for Statewide FAIR Plans under the Urban Property Protection and Reinsurance Act of 1968" issued by the Department on October 3, 1968, in implementation of 12 U.S.C. 1749bbb-3; to require such Plans to provide vandalism and malicious mischief coverage as essential property insurance in accordance with 12 U.S.C. 1749bbb-2(a)(2); and to modify and further define present criteria for such Plans, in accordance with 12 U.S.C. 1749bbb-6(b), by the additional requirements set forth in § 1905.13 to § 1905.22. After receipt of comments and suggestions in accordance with the following paragraph, it is anticipated that the initial and additional criteria of Subparts A and B will be combined to eliminate any redundancy or overlap.

Interested persons may submit written comments or suggestions on the proposed regulation to the Federal Insurance Administration, Department of Housing and Urban Development, Washington, D.C. 20410. Prior to adoption of the regulation, consideration will be given to comments or suggestions received within 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Proposed Part 1905 of Chapter VII of Title 24 reads as follows:

PART 1905—STATEWIDE "FAIR" PLANS

Subpart A—Initial Criteria

Sec.

Subpart B—Additional Criteria

AUTHORITY: The provisions of this Part 1905 issued under title XII of the National Housing Act, added by the Urban Property Protection and Reinsurance Act of 1968, as amended (secs. 405-407, Public Law 91-152, Dec. 24, 1969), 12 U.S.C. 1749bbb—1749bbb-21; 5 U.S.C. 553; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969.

Subpart A—Initial Criteria

§ 1905.1 Definitions.

As used in this part—

(1) "Act" means the Urban Property Protection and Reinsurance Act of 1968, enacted as title XII of the National Housing Act (12 U.S.C. 1749bbb—1749bbb-21), which authorized the program;

(2) "Administrator" means the Federal Insurance Administrator within the Department of Housing and Urban Development, to whom the Secretary has delegated the administration of the program (34 F.R. 2680, Feb. 27, 1969);

(3) "Binder" means a temporary and preliminary contract of insurance to protect a property owner against loss from the occurrence of an insurable event before a policy is issued;

(4) "Deemer provision" means a provision in a Plan whereby an eligible risk is automatically deemed insurable on and after a specified date if, through no fault of the property owner, a determination of insurability (or uninsurability) has not been made and notice provided to the property owner by such date;

(5) "Eligible property," "eligible risk," or "risk eligible under the Plan" means any real, personal, or mixed real and personal property, potentially insurable under one or more lines of essential property insurance, subject to an inspection to ascertain insurability and applicable premium rates;

(6) "Environmental hazard" means any hazardous condition that might give rise to loss under an insurance contract, but which is beyond the control of the property owner;

(7) "Essential property insurance" means insurance against direct loss to property as defined and limited in standard fire policies and extended coverage endorsements thereon, as approved by the State insurance authority, and insurance for such types, classes, and locations of property against other perils, including vandalism and malicious mischief, as the Administrator may require by regulation. Such insurance shall not include automobile insurance and shall not include insurance on such types of manufacturing risks as may be excluded by the State insurance authority;

(8) "FAIR Plan" or "Plan" means any statewide Plan to assure "fair access to insurance requirements" (FAIR) approved by the Administrator as meeting the criteria of Part A of the Act, including such modifications thereof as the Administrator may from time to time promulgate under this part in accordance with subsection 1214(b) of the Act (12 U.S.C. 1749bbb-6(b));

(9) "Inspection facility", with respect to any State, means any rating bureau or other person designated by the State

insurance authority or by law to perform inspections under a Plan;

(10) "Insurer" includes any insurance company, or group of companies under common ownership, authorized to engage in the insurance business under the laws of any State;

(11) "Participating insurer" means any insurer eligible for membership in a Plan and fully participating in such Plan. The term shall not include any insurer in any State in any year in which such insurer does not participate in the Plan on a risk-bearing basis;

(12) "Person" includes any individual or group of individuals, corporation, partnership, or association, or any other organized group of persons;

(13) "Placement facility" means the facility established under a Plan to place or provide essential property insurance, up to the full insurable value of the property to be insured, to persons making application for one or more lines of such insurance under the Plan;

(14) "Pool" means any pool or association of insurance companies in any State which is formed, associated, or otherwise created for the purpose of sharing risks and of making property insurance more readily available;

(15) "Program" means the National Insurance Development Program authorized by the Act;

(16) "Property owner," with respect to any real, personal, or mixed real and personal property, means any person having an insurable interest in such property;

(17) "Secretary" means the Secretary of Housing and Urban Development;

(18) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions, and the Trust Territory of the Pacific Islands;

(19) "State insurance authority" means the person having legal responsibility for regulating the business of insurance within a State;

(20) "Year" means a calendar year, fiscal year of a company, association, or pool, reinsurance contract year, or such other period of 12 months as may be designated by the Administrator.

§ 1905.2 Composition of FAIR Plan.

(a) The Administrator will review each State's FAIR Plan in its entirety for conformity to statutory criteria (12 U.S.C. 1749bbb–3—1749bbb–6) and this part. Although the number and location of the required elements in a Plan will vary on the basis of the particular method and procedures used by the State, the documentation comprising each Plan could include any or all of the following, as relevant:

(1) The State law, where one has been enacted;

(2) The industry agreement or program, if any;

(3) The approval action by the State insurance authority with respect to the industry agreement or program or, where applicable, by court order or other approval authority; and

(4) Implementing rules, regulations, and orders, together with operating procedures and forms.

(b) The Plan must include a certification by the State insurance authority of the date on which the Plan was placed in effect and on which any amendments to the Plan are effective. In the case of a Plan in which participation by insurers is voluntary, the Plan must include a listing by the State insurance authority of the insurers who are participating in the Plan and an estimate by the authority of the participating insurers' proportionate share of property insurance written by all insurers in the lines covered by the Plan.

§ 1905.3 Coverage of the Plan.

(a) At a minimum, the Plan must provide for insurance against direct loss to property as defined and limited in standard fire policies and extended coverage endorsements thereon, as approved by the State insurance authority. It shall not include automobile insurance and need not include such types of manufacturing risks as may be excluded by the State insurance authority. The Plan should specifically indicate that its coverage includes insurance against direct loss to property which is being constructed or rehabilitated (including builder's risk coverage). To avoid the need for amendment to the Plan and delays in securing new approval action, the Plan should permit the inclusion of such additional lines of property insurance as may be designated by the Administrator pursuant to the Urban Property Protection and Reinsurance Act of 1968.

(b) The Plan must specify the geographic area of coverage. If the entire State is not designated as the area of coverage, the Plan must specify—by name, by population size, or by class—the political subdivisions and other areas eligible under the Plan. The area of coverage may not be limited to communities which have a blighted or deteriorating area or an area approved by the Secretary for an urban renewal project.

§ 1905.4 Inspection under the Plan.

(a) The Plan must designate an inspection facility, which may also operate as a placement facility if that is desired.

(b) Any owner of an eligible property within an area covered under the Plan is entitled to obtain an inspection. The Plan must require that there will be an inspection of any eligible risk which is submitted to a placement facility or to a participating insurer, before such insurer may deny coverage or write coverage at surcharged rates. The Plan may not require as a precondition for obtaining an inspection that the property owner make a showing or certification that he has been unable to obtain insurance on the regular market.

(c) The Plan must provide that inspections may be requested by the property owner or his representative, the insurer, or the insurance agent, broker, or other producer. The Plan must also provide that the request for an inspection need not be in writing, although it can provide for the transcribing of the pertinent information on a form.

(d) An inspection under the Plan must be without cost to the property owner. Payment of a premium deposit may not be required as a precondition to inspection. However, the Plan may provide for a property owner, at his option, to elect to pay a premium deposit at the time of application, rather than upon or subsequent to the operative date of a deemer or binder provision.

(e) The Plan may not require the presence of the owner of the building for a tenant to obtain an inspection, but the inspection facility must be provided access to the relevant portions of the property for which insurance is sought.

(f) After the inspection, the inspection facility shall promptly (the Plan must specify the number of days) send a copy of the inspection report to the insurer, placement facility, pool, or other organization which handles the placement of insurance under the Plan. The Plan must provide that the person requesting the inspection may designate a particular insurer he wishes to consider his application for insurance. (This is not to be construed to mean that such person has any right to designate the insurer once the risk is referred to the placement facility.)

§ 1905.5 Placement facility and program.

(a) The placement program may take any of a variety of forms; for example, it may involve a direct writing pool, or an assigned risk facility, or a reinsurance pool or association, or combinations of these.

(b) The Plan must include an all-industry placement facility doing business with every insurer participating in the Plan and provide that the facility will perform the following functions for properties meeting reasonable underwriting standards:

(1) Upon request by or on behalf of a property owner requesting an inspection under the Plan, distribute unplaced risks involved equitably among the insurers with which it does business; and

(2) Place insurance up to the full insurable value of the risk to be insured with one or more insurers with which it is doing business, except to the extent that deductibles, percentage participation clauses, and other underwriting devices are employed to meet special problems of insurability. In the case of very large risks (e.g., those whose full insurable value exceeds $1,500,000), the Plan must provide that the placement facility will undertake the responsibility for seeking to place the excess portion.

(c) An assigned risk placement program may provide for preestablished criteria and limitations as to the distribution of referrals to insurers, such as the following:

(1) Distribution of habitational and commercial risks on the basis of the insurer's proportionate share of the aggregate premiums written for each category by all insurers in the Plan;

(2) Permitting an insurer to avoid receiving referrals of classes of applications either (i) in a line of property insurance or (ii) in a geographic area covered by the Plan on the basis of specific criteria demonstrating the inability of the insurer to service a particular line or geographic area;

(3) Permitting an insurer to decline referral of an acceptable risk on the basis of "overlining," but the overlining criteria must be set forth in the Plan; and

(4) Permitting an insurer to place limits on the liability it is willing to accept by assignment, subject to a specified minimum liability per risk, and the Plan may establish a maximum limit on liability to be placed by assignment on a single property.

(d) An insurer (such as a new company or a specialty writer) which has not previously written covered lines of property insurance may be permitted to participate in the Plan, according to such criteria as the State insurance authority may approve. For example, such an insurer might participate in a direct-writing or reinsurance pool on the basis of a special financial contribution formula designed to compensate for inability to handle assigned risks under another part of the Plan. Similarly, a surplus lines writer, whether licensed to do business in the State or not, may be permitted to participate. However, Federal riot reinsurance will be offered only to those insurers which have direct writings in one or more lines of essential property insurance and which are risk-bearing or potentially risk-bearing members of any pool organized under the Plan, as certified by the State insurance authority.

§ 1905.6 Placement requirements.

(a) Any insurer or direct-writing pool to which a risk is referred by the inspection facility or an assigned risk placement facility will complete an action report and return it promptly to the inspection or placement facility (within a specified number of days). The action report will indicate:

(1) The amount of coverage that the insurer agrees to write and, if the coverage is with a surcharge (including any condition charge), the amount of such surcharges and the improvements needed for coverage at a lower surcharged rate and at an unsurcharged rate;

(2) The amount of coverage the insurer agrees to write if specified improvements are made; or

(3) That the insurer declines to write the coverage because it does not meet reasonable underwriting standards, in which case it will also state the specific information from the inspection report and other sources which constitutes the basis for this determination.

(b) Reasonable underwriting standards must be relevant to the perils sought to be insured against. For example, they may include:

(1) Physical condition of the property; however, the mere fact that a property does not satisfy all current building code specifications would not, in itself, suffice;

(2) The property's present use, such as extended vacancy (other than for rehabilitation purposes) or the illegal storage of flammable materials; or

(3) Other specific characteristics of ownership, condition, occupancy, or maintenance which are violative of public policy and result in increased exposure to loss.

(c) In the event that a risk is declined on the basis that it does not meet reasonable underwriting standards, or that the coverage will be written on condition that the property be improved, the insurer or direct-writing pool shall promptly (within a specified number of days) send copies of the inspection and action reports to the property owner and State insurance authority advising the property owner of the appeal procedures available to him, including rights of appeal to the State insurance authority under applicable State law. Appeal procedures within the Plan must provide for prompt handling.

(d) If an insurer or pool agrees to write the coverage, it shall be written promptly (within a specified number of days after request for coverage), and the policy or binder shall be delivered to the property owner upon payment of the premium.

§ 1905.7 Cancellation or nonrenewal of risks.

The Plan must require participating insurers to give any policyholder reasonable notice (a specified number of days) prior to cancellation or nonrenewal of any risk eligible under the Plan (except in the case of nonpayment of premiums, evidence of incendiarism, or misrepresentation), to allow ample time for an application for new coverage to be provided under the Plan, and insurers shall explain the procedure for making application under the Plan in or with the notice of cancellation or nonrenewal. The length of the notice period will depend upon the particular Plan. It is expected that no policyholder will be without coverage following a cancellation or nonrenewal due solely to delays in inspecting and placing the risk and the Plan must set forth the manner in which the objective of maximum possible continuity of coverage is to be accomplished. Binding coverage immediately subject to inspection would accomplish this and is encouraged.

§ 1905.8 Coding and reports.

(a) The Plan must provide for the separate coding of policies written pursuant to the Plan.

(b) The Plan must provide that the inspection facility shall submit to the State insurance authority and the Administrator periodic reports setting forth the number of requests for inspection, the number of risks inspected, and the results of referrals by the facility, including by individual insurer the number of risks accepted, the number of risks conditionally accepted and reinspections made, the number of risks declined, and such other information as the State insurance authority or the Administrator may require.

§ 1905.9 Cooperation of agents.

The Plan must provide for full cooperation by and with all agents and brokers licensed to write property lines in the State.

§ 1905.10 Public education program.

The Plan must provide for a continuing public education program by participating insurers, agents, and brokers to assure that the Plan receives adequate public attention. For example, a brochure or other publication should be made widely available for distribution through all agents, brokers, and other producers. Such a publication could be included by participating insurers, agents, and brokers with each notice of cancellation or nonrenewal to provide policyholders with the required information on the placement of insurance under the Plan.

§ 1905.11 Approval and supervision of the Plan.

The Plan must evidence that it has been approved by, and is to be administered under the supervision of, the State insurance authority.

Subpart B—Additional Criteria

§ 1905.12 Vandalism and malicious mischief coverage.

(a) The Administrator hereby designates vandalism and malicious mischief coverage as essential property insurance within the meaning of sec. 1203(a)(2) and of Part A (12 U.S.C. 1749bbb-2(a)(2) and 1749bbb–3–6) of the Act.

(b) Each State insurance authority shall take the necessary action to require the provision of such coverage through the FAIR Plan placement facility to eligible risks on and after July 1, 1970, and shall send to the Administrator a copy of the order or directive implementing this § 1905.12.

(c) This section 1905.12 shall not apply (1) in any State where the State insurance authority certifies by July 1, 1970, that the availability of vandalism and malicious mischief insurance in the normal market is fully adequate to meet the demand for such coverage, and that such adequate market availability also extends to properties which obtain fire and extended coverage under the Plan, or (2) prior to the close of the first full regular session of the appropriate State legislative body following the effective date of this § 1905.12 in any State where the offering of vandalism and malicious mischief coverage under the Plan would be contrary to existing State law.

§ 1905.13 Accessibility of FAIR Plan facilities.

In addition to the public education program required by § 1905.10, the Plan shall make its inspection and placement facilities readily available and directly accessible to the general public by providing a central source of information on the services it provides and on the manner of application. To assure the public's access to such information, the telephone information number of the Plan shall be listed alphabetically (a) under "FAIR Plan" in the white sections and (b)

under "Insurance" in the classified sections of the telephone directories of each city in which these facilities maintain an office.

§ 1905.14 Deemer or binder requirement.

(a) Each Plan shall contain either a deemer or binder provision in order to prevent lapses of insurance coverage for risks eligible under the Plan before coverage has been provided or declined under the Plan. A Plan may contain both a deemer and a binder provision.

(b) Plans which adopt a deemer provision shall provide that eligible risks are automatically deemed eligible for coverage if, through no fault of the property owner, coverage has not been provided or declined within 20 calendar days after the date the request for inspection was received, and the property owner, at the time of requesting the inspection or at any time prior to the receipt of an inspection report indicating that the property is uninsurable, pays either the annual premium or the portion thereof appropriate for the period of time for which the coverage is provided. The period of coverage provided under any such deemer provision shall not be less than the time required to complete the inspection and to fully process any related application for insurance submitted by the property owner in the ordinary course of business either directly to the placement facility or first to a designated insurer and thereafter to the placement facility if necessary.

(c) Plans which adopt only a binder provision shall provide that property owners may apply for and obtain coverage for eligible risks through the inspection or placement facility, as appropriate, either at the time of requesting the inspection or at any time prior to the receipt of an inspection report indicating that the property is uninsurable. The Plan, at its option, may also provide that coverage under the binder shall be extended for a sufficient period of time, after receipt of an unfavorable inspection report, to enable the property owner to bring the property up to insurable standards, but during the period of such rehabilitation reasonable surcharges may be added to the normal premium rates otherwise applicable to such property.

(d) Coverage provided under the deemer or binder provisions of the Plan shall be at the normal rates for the class of property to be insured, exclusive of any surcharge, but shall be subject to an appropriate premium adjustment, if necessary, after the property has been inspected.

§ 1905.15 Notice of cancellation or nonrenewal.

(a) Each Plan shall require its participating insurers to give, and each such insurer shall give, property owners no less than 30 days actual prior notice of a cancellation or nonrenewal of coverage on any eligible risk, whether or not such risk is then insured under the Plan, in order to allow the property owner affected sufficient time to apply for an inspection and to obtain coverage under the Plan if necessary.

(b) Except where the property owner receives actual and timely notice of cancellation or nonrenewal in accordance with paragraph (a) of this section, no insurer shall be excused from the notice requirement of this section by reason of the fact that notices of cancellation or nonrenewal of its policies are normally dispatched by its independent agents or brokers.

(c) For the purposes of this section, the term cancellation or nonrenewal shall include both reductions and adverse modifications in coverage initiated by the insurer and refusals by any independent agent to renew any expiring coverage in any line of essential property insurance previously provided to the property owner by the participating insurer.

(d) This § 1905.15 shall not apply prior to the close of the first full regular session of the appropriate State legislative body following the effective date of such section in any State where its implementation would be contrary to existing State law.

§ 1905.16 Prohibition of automatic reinspections.

In order to avoid unduly increasing the costs of the program, no Plan shall henceforth permit the annual or routine reinspection of eligible risks for which coverage has been previously obtained under the Plan. Once an eligible risk has been inspected and found insurable, the Plan may permit its reinspection only (a) upon request of the property owner, (b) for the purpose of determining whether to eliminate surcharges, (c) on a limited basis for statistical purposes, (d) upon change in type of occupancy, (e) upon a reasonable periodic schedule of not more often than once every 3 years, or (f) for cause upon information or well-founded belief that the property has subsequently become uninsurable.

§ 1905.17 Limitation on surcharges.

No surcharge shall be made on any risk unless it is based upon an appropriate, objective, and identifiable physical condition of the property, as disclosed by an inspection and specified in an inspection report.

§ 1905.18 Impartial selection of adjusters.

(a) No Plan or placement facility shall discriminate by providing for the primary use or services, or for the preferential treatment, of any adjuster to the exclusion, detriment, or disadvantage of any other adjuster of equal or equivalent professional qualifications in any formal or informal arrangements made or promulgated for the adjustment of any insured losses under policies or contracts of insurance issued under the Plan.

(b) This § 1905.18 shall not be construed to prohibit the impartial appointment of a supervisory adjuster with respect to any individual loss directly insured by three or more insurers, nor to prohibit any Plan from obtaining the services of qualified loss adjusters at the lowest administrative cost for a reasonable period of time by the adoption of an impartial and periodic public bidding procedure.

§ 1905.19 Quarterly reports by placement facility.

(a) Each placement facility under the Plan shall furnish to the Administrator not later than 90 days after the close of its fiscal year a comprehensive report on its operations during the year. The first such report shall be due on or before April 30, 1970, for its most recent full year. The report shall include any printed or published report under the Plan, together with such additional information for the year as may be required on Form HUD–1603, State FAIR Plan Report, which shall be included with and made part of the facility's report.

(b) Each placement facility under the Plan shall also, commencing with the quarter beginning January 1, 1970, provide the Administrator with quarter-annual reports of its current operations on Form HUD–1603, which the Administrator shall furnish to the facility. Such reports shall be due not later than 90 days after the end of each quarter.

§ 1905.20 Lists of insurers.

Each State insurance authority under whose jurisdiction a Plan has been put into operation shall notify the Administrator as soon as practicable after May 1 of each year of the names of all insurers which are fully participating (on a risk-bearing basis) in the FAIR Plan of such State on such date in accordance with the conditions of the Standard Reinsurance Contract as set forth in § 1906.35.

§ 1905.21 Minimum definition of urban areas.

(a) The term "urban area" for the purposes of minimum geographic coverage under the Plan shall include (1) all incorporated places regardless of size, (2) all unincorporated places of 2,500 inhabitants or more which have been determined to be part of the urban population by the Federal Bureau of the Census, and (3) all Standard Metropolitan Statistical Areas as designated by the Federal Bureau of the Budget and published and revised from time to time.

(b) This § 1905.21 shall not apply prior to the close of the first full regular session of the appropriate State legislative body following the effective date of such section in any State where its implementation would be contrary to existing State law.

§ 1905.22 Notification of changes in Plans.

Each State insurance authority under whose jurisdiction a Plan has been put into operation shall keep the Administrator fully and currently informed of any modifications or changes in the organization or operation of the Plan in his State, whether or not such changes directly affect the availability of coverage under the Plan.

§ 1905.23 Waiver of regulations.

In accordance with section 1214(b) of the Act (12 U.S.C. 1749bbb–6(b)), the Administrator may waive compliance with one or more provisions of this part with respect to any State if the State insurance authority certifies that compliance is unnecessary or inadvisable under local conditions or State law and the Administrator concurs in such certification.

Effective dates. Sections 1905.12 through 1905.15 and § 1905.21 shall be effective on July 1, 1970. All other sections of this part shall be effective upon publication.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[F.R. Doc. 70-4283; Filed, Apr. 8, 1970; 8:45 a.m.]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGFR 70-34]

DRAWBRIDGE OPERATION REGULATIONS

Notice of Proposed Rule Making

1. Notice is hereby given that the Commandant, U.S. Coast Guard under authority of section 5, 28 Stat. 362, as amended (33 U.S.C. 499), section 6(g)(2) of the Department of Transportation Act (49 U.S.C. 1655(g)(2) and 49 CFR 1.46(c)(5)) is considering a request by the Massachusetts Department of Public Works to revise the special operation regulations for the Granite Avenue highway bridge across the Neponset River between Boston and Milton, Mass.

2. Accordingly, it is propdsed to revise § 117.75(l)(1) to read as follows:

§ 117.75 **Boston Harbor, Mass., and adjacent waters; bridges.**

* * * * *

(l)(1) *Neponset River, the New York, New Haven, and Hartford Railroad bridge and Neponset Avenue highway bridge.* From November 1 through April 30 between the hours of 10 p.m. and 6 a.m. 24 hours' advance notice is required.

(2) *Granite Avenue highway bridge.* From November 1 through April 30 between the hours of 4 p.m. and 8 a.m. 24 hours' advance notice is required.

* * * * *

3. Interested persons may participate in this proposed rule making by submitting written data, views, arguments, or comments as they may desire on or before April 30, 1970. All submissions should be made in writing to the Commander, 1st Coast Guard District, J. F. Kennedy Federal Building, Government Center, Boston, Mass. 02203.

4. It is requested that each submission state the subject to which it is directed, the specific wording recommended; the reason for any recommended change, and the name, address, and firm or organization, if any, of the person making the submission.

5. Each communication received within the time specified will be fully considered and evaluated before final action is taken on the proposal in this document. This proposal may be changed in light of the comments received. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, 1st Coast Guard District.

6. After the time set for the submission of comments by the interested parties, the Commander, 1st Coast Guard District, will forward the record, including all written submissions, and his recommendations with respect to the proposals and the submissions, to the Commandant, U.S. Coast Guard, Washington, D.C. The Commandant will thereafter make a final determination with respect to these proposals.

Dated: April 2, 1970.

W. J. SMITH,
Admiral, U.S. Coast Guard, Commandant.

[F.R. Doc. 70-4333; Filed, Apr. 8, 1970; 8:49 a.m.]

Federal Aviation Administration

[14 CFR Part 145]

[Docket No. 10182; Notice 70-10]

REPAIR STATIONS

Proposed Equipment and Material Requirements for Radio Rated Repair Stations

Correction

In F.R. Doc. 70-3047 appearing at page 4523 in the issue for Friday, March 13, 1970, the 10th complete paragraph in the third column on page 4524 should read:

Determine operational condition of radio equipment installed in aircraft by using appropriate portable test apparatus.

Hazardous Materials Regulations Board

[49 CFR Part 173]

[Docket No. HM-44; Notice No. 70-5]

TRANSPORTATION OF HAZARDOUS MATERIALS

Parathion and Methyl Parathion in Tank Cars

The Hazardous Materials Regulations Board is considering amending § 173.358 (a) of the Department's hazardous materials regulations to authorize shipments of parathion and methyl parathion in specification 105A300W tank cars.

This proposal is based on a petition submitted by the Bureau of Explosives of the Association of American Railroads at the request of the Manufacturing Chemists' Association. Over the past several years tank car shipments of these class B poisonous liquids have been conducted under special permit provisions. No reports of adverse experience relative to shipments made under the terms of these special permits have been received by the Department.

Precedent for the use of 105A300W tank cars for the transportation of liquid organic phosphate compounds was established in 1964 when this type tank car was prescribed for liquid organic phosphate compound mixtures, n.o.s., in 49 CFR 173.359(a). Specification 105A300W tank car tanks are insulated and are designed primarily for the transportation of liquefied compressed gases. These tanks are pressure vessels having a test pressure of 300 p.s.i. and a minimum burst pressure of 2.5 times test pressure. It is the Board's opinion that this type of tank car is equal to or greater in strength and efficiency than certain types of tank cars prescribed, and proven to be satisfactory for, class B poisonous liquids, n.o.s., in § 173.346 of the regulations. Outstanding special permits limit the capacity of tank cars to a maximum of 12,000 gallons for shipments of these materials. The Board intends to continue this limitation.

In consideration of the foregoing, it is proposed to add subparagraph (a)(11) in § 173.358 to read as follows:

§ 173.358 **Hexaethyl tetraphosphate, methyl parathion, organic phosphate compound, n.o.s., parathion, tetraethyl dithio pyrophosphate, and tetraethyl pyrophosphate, liquid.**

(a) * * *

(11) Spec. 105A300W (§§ 179.100, 179.101). Tank cars. Authorized for parathion and methyl parathion only. The nominal water capacity of a tank car must not exceed 12,000 gallons.

Interested persons are invited to give their views on this proposal. Communications should identify the docket number and be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590. Communications received on or before May 19, 1970 will be considered before final action is taken on the proposal. All comments received will be available for examination by interested persons at the Office of the Secretary, Hazardous Materials Regulations Board both before and after the closing date for comments.

This proposal is made under the authority of sections 831–835 of title 18 United States Code, and section 9 of the Department of Transportation Act (49 U.S.C. 1657).

Issued in Washington, D.C., on April 3, 1970.

R. N. WHITMAN,
Administrator, Federal Railroad Administration.

[F.R. Doc. 70-4359; Filed, Apr. 8, 1970; 8:51 a.m.]

Office of Pipeline Safety

[49 CFR Part 192]

[Notices 70–1A, 70–2A; Docket Nos. OPS 3A, 3B]

MINIMUM FEDERAL SAFETY STANDARDS FOR GAS PIPELINES

Extension of Comment Period

The Department of Transportation has issued a series of eight notices of proposed rulemaking which together propose the comprehensive minimum Federal safety standards for gas pipeline facilities and for the transportation of gas required by section 3(b) of the Natural Gas Pipeline Safety Act of 1968.

Each notice, with the exception of the first, contains a date for submission of comments. When these comment periods were established, a period of overlap was provided in order that all the proposals would be available for review before the first comments were due.

The last notice of the series is being issued today. Since comments on Notice 70–1 are due on April 13, 1970, and comments on Notice 70–2 are due April 20, 1970, it appears that the period of overlap will not be adequate. Therefore the comment periods for these two notices are being extended until April 27, 1970.

For the convenience of commenters the following is a list of the entire series of notices with the applicable closing date for comments.

Notice	Docket	Title	Federal Register publication	Comments due by—
69-3	OPS-3	Minimum Federal Safety Standards	34FR18556	Nov. 21, 1969
70-1	OPS-3A	Welding and Other Joining of Pipe Components	35FR1112	Apr. 27, 1970
70-2	OPS-3B	General Construction Requirements	35FR3237	Apr. 27, 1970
70-3	OPS-3C	Customers Meters, Service Regulators and Service Lines	35FR4526	May 6, 1970
70-4	OPS-3D	Class Location	35FR5012	May 11, 1970
70-5	OPS-3E	Operation and Maintenance	35FR5482	May 18, 1970
70-6	OPS-3F	Testing and Uprating	35FR	May 25, 1970
70-7	OPS-3G	Pipe and Component Design	35FR	May 25, 1970

This notice is issued under the authority of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. section 1671 et seq.), Part 1 of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 1), and the delegation of authority to the Director, Office of Pipeline Safety, dated November 6, 1968 (33 F.R. 16468).

Issued in Washington, D.C., on April 30, 1970.

W. C. Jennings,
Acting Director,
Office of Pipeline Safety.

[F.R. Doc. 70–4343; Filed, Apr. 8, 1970; 8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 64]

[Docket No. 16979; FCC 70–338]

INTERDEPENDENCE OF COMPUTER AND COMMUNICATION SERVICES AND FACILITIES

Notice of Proposed Rule Making

In the matter of regulatory and policy problems presented by the interdependence of computer and communication services and facilities.

1. Notice of proposed rule making in the above-entitled matter is hereby given.

2. The purpose of this notice is to afford interested persons an opportunity to comment on the tentative decision of the Commission (Appendix A hereto) in the Computer Inquiry, Docket No. 16979, and on proposed rules to implement the policies set forth therein.

3. In the tentative decision the Commission is proposing to establish a policy that communications common carriers, subject to our jurisdiction, should not engage directly in the sale of data processing services, but that such carriers, other than the Bell System companies, may indirectly engage in such services through separate corporate entities subject to certain requirements and safeguards. An exemption would be provided, however, for smaller companies.

4. We propose to amend Part 64 of our rules to add a new section 64.702 which will serve as an initial step toward implementing the recommended policy in this area. Specifically, the proposed new section 64.702 would prohibit common carriers, subject to our jurisdiction, from engaging directly or indirectly in data processing services, except that carriers other than the Bell System companies may do so through separate corporate entities maintaining separate books, operating personnel, and facilities. The rule also would require each carrier to file all contracts, agreements or arrangements that it has with such separate data processing corporations. It is contemplated that the rule would be effective 6 months after promulgation.

5. This proposed addition to our rules is issued pursuant to authority contained in sections 4 (i) and (j), 201(b), 202(a), 203(c), 211(b), 218, 219(b), 313(a) and 403 of the Communications Act of 1934, as amended.

6. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on the attached tentative decision of the Commission (Appendix A) and on the proposed rules set forth in Appendix B on or before May 13, 1970. Oral argument on the proposed rules and tentative decision will be scheduled by further order of the Commission. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

7. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs or comments filed shall be furnished the Commission.

Adopted: April 1, 1970.

Released: April 3, 1970.

Federal Communications Commission,[1]
[SEAL] Ben F. Waple,
Secretary.

Appendix A

[Docket No. 16979]

Tentative Decision of the Commission

A. *Introduction.* 1. This inquiry was initiated November 10, 1966, to provide a public forum for the examination, discussion and resolution of a number of regulatory and policy questions that appeared to be emerging from the growing interdependence of computers and communications services and facilities.

2. We addressed ourselves initially to the development of information regarding actual and potential computer uses of communication facilities and services. We sought also to develop views and recommendations as to whether there is any need for new or improved common carrier service offerings, or for revised rates, regulations, and practices of carriers to meet the emerging communications requirements for the processing of data; whether, and under what circumstances, the rendition of data processing and other computer services involving the use of communications facilities should be free from, or subject to, Government regulation; whether, and under what conditions, the entry into the provision of such computer services by common carriers and others requires regulatory control; and whether any measures are required to be taken by the computer industry, communications common carriers, or the Government to protect the privacy of data stored in computers and transmitted over communications facilities. Attachment A hereof sets forth the full text of the items of inquiry contained in our initial notice.

3. In response to our initial notice of inquiry, we received approximately 3,000 pages of comments from 60 parties representing a broad cross-section of interests in both the computer and communications fields. Attachment B lists these respondents. Following the submission of these initial responses, on March 5, 1968, we contracted with Stanford Research Institute (SRI) for an independent evaluation of the responses and the submission of recommendations to the Commission with respect to the issues specified in the notice of inquiry. SRI delivered its results to us in March 1969, in a series of seven reports which were published and made available to all those who filed initial responses to our inquiry.

4. On May 1, 1969, we adopted a report and further notice of inquiry, 17 FCC 2d 587 (hereinafter referred to as "First Report"). On July 24, 1969, our record herein

[1] Commissioner Johnson concurring in the result; Commissioner H. Rex Lee absent.

was closed with the submission of comments directed to the SRI reports from 21 interested parties. Attachment C identifies those respondents.

5. It is clear from the comments submitted by respondents, as well as those in the SRI reports, that the issues which raised basic concern in both the communications and computer industries are those which relate to the nature and extent of the regulatory jurisdiction and control which we intend to exercise over the furnishing of data processing and communications services, or some combination thereof, by noncarrier data processing organizations and the furnishing of data processing services by communications common carriers.

B. *Adequacy of Rates and Services of Common Carriers.* 6. Before addressing these basic issues in detail, we wish to note several other important issues raised in our notice of inquiry which merit comment at this time in light of our decision to terminate this docket. The first is whether existing common carrier rates, regulations and practices are compatible with the present and future needs of the computer industry (Item G). The second concerns the need of the data processing industry for new common carrier tariff offerings or services (Item H), and the adequacy of the existing common carrier facilities in attempting to meet present-day needs (Item I). The third is whether any measures are required to be taken by the computer industry or common carriers, or both, to protect the privacy of data stored in computers and transmitted over common carrier facilities (Item J). It is our purpose here to review briefly the progress that has already been made in the treatment of certain aspects of these remaining issues and to indicate how we intend to deal further with them.

7. With respect to the first of these issues, the adequacy of present tariff offerings of common carriers, and particularly the question of interconnection, was the subject of considerable comment from many computer respondents. We have already pointed out in our First Report that, in compliance with our decision in the Carterfone Case (In The Matter of Use of Carterfone Device in Message Toll Telephone Service, 13 FCC 2d 420, (1968); Petition for Reconsideration Denied, 14 FCC 2d 571 (1968)), the telephone companies had filed tariff changes effective January 1, 1969, greatly liberalizing the provisions with respect to interconnection, and that informal proceedings had been instituted to consider and resolve the remaining interconnection problems (First Report, supra, paragraphs 9–12, at 589, 590). Since that time there have been further significant developments with respect to this matter. Further liberalizations of the interconnection provisions were made in the Wide Area Telephone (WATS), Private Line and TWX tariffs following the filing of the January 1, 1969, tariff revisions. Formal hearings are now in progress on the question of whether additional interconnection revisions should be made in the TWX interconnection tariff (Docket FCC No. 18718). Informal conferences under Commission auspices are proceeding on various nontechnical aspects of the interconnection tariffs. In addition, the National Academy of Sciences is making a study for us and will report its recommendations as to the technical feasibility of further tariff changes proposed by the computer industry to enable it to make a more effective use of common carrier facilities.

8. Many of the data processing respondents to this inquiry also emphasized the need for a shorter, and lower-rate, minimum period to permit a more economical transmission of data, large volumes of which can be transmitted in short bursts measured in seconds. We recognized this concern in our First Report (supra, paragraph 13, at 590) and called attention to certain steps then under way by the telephone companies to experiment with a rate structure in certain limited geographical areas that would feature a 1-minute, rather than a 3-minute, minimum rate period for the use of the switched telephone network. Since our First Report, A.T. & T. has taken a first step in this direction by filing revised tariffs, effective January 1, 1970, which offer a low 1-minute minimum rate service on a regular and nationwide basis, between the hours of 12 midnight and 8 a.m. This service offering provides a lower rate for message toll service which can be used for the transmission of data over the switched telephone network. Also, since our First Report, the Commission has issued a significant decision in which a new carrier, Microwave Communications, Inc., was permitted to enter the field of intercity long distance service between Chicago and St. Louis for the purpose, among others, of providing the public a wider range of voice and data transmission services (Microwave Communications, Inc. (Docket FCC No. 16509 et al.) 18 FCC 2d 953 (1969); Petition for Reconsideration Denied, 21 FCC 2d 190 (1970)) [14] Applications have since been filed by a number of other entities for license authority to enter the common carrier field to provide service, in part, to meet the asserted needs of computer users. One such entity proposes a dedicated data transmission switched network interconnecting 35 of our larger cities with the ultimate aim of providing customer-to-customer service in digital form (Datran proposal). There is an informal proposal by Microwave Communications, Inc., pending before the Commission to interconnect existing specialized microwave common carriers in a nationwide network for the purpose, among others, of satisfying the requirements of the educational community for low cost data transmission services. Proposals have also been advanced with respect to the possible use of communications satellites for a low-cost business oriented nationwide communications network service.

9. Our First Report also referred to the need stressed by respondents to our initial inquiry for greater customer sharing of common carrier facilities (First Report, supra, paragraph 14, at 590–591). We noted that the telephone companies had, after comments were submitted, filed tariffs which permit sharing of private line circuits of voice grade or lesser bandwidth. More recently tariffs have been filed, on an experimental basis, offering a wideband private line service over certain high-capacity cable and radio routes of the telephone companies in which the sharing by joint users will be permitted on virtually an unlimited basis (A.T. & T.'s Series 11000). The aforementioned Microwave Communications, Inc., proposal for intercity service between St. Louis and Chicago, also includes sharing as a major feature thereof, as do the recently filed applications of Datran and others referred to above. Removal of restrictions on the customer sharing of Telpak private line services is also being currently considered by the Commission in Docket FCC No. 17457.

10. It must be understood that the outstanding proposals for new common carrier services which are now pending before the Commission remain to be evaluated in accordance with applicable statutory standards and regulatory policy. It is our view, however, that all of the foregoing developments signify that since the inception of this Inquiry, major progress has been made and is continuing toward improved and more economical communications services for computer users. These developments also lead us to the conclusion that the questions relating to interconnection or to the need for other improved common carrier service offerings, regulations and practices to serve computer needs, can best be handled through rate, tariff and licensing proceedings that are now pending or that may be initiated in the future, rather than through a continuation of our inquiry in this docket.

11. With respect to the questions which have been raised by respondents regarding the adequacy of common carrier facilities and services to meet present and future communications needs of computer users, the specific nature and extent of such requirements are not clearly ascertainable from the information available to us. This is largely because computer technology and its commercial applications are developing with no fixed patterns at this time with the result that it is most difficult to project and quantify the communications requirements of computer users. These are matters that the Commission intends to monitor on a continuous basis. It is important for this purpose that the Commission have a continuing input from interested parties with respect to current requirements which are not being met adequately by the common carriers as well as with respect to anticipated requirements for which the carriers should be planning. Accordingly, we intend to establish appropriate informal procedures by which such information may be received and reviewed on a continuing and current basis by the Commission. Such procedures will be designed to afford interested parties the opportunity to participate in a discussion and evaluation of present and future communications requirements of computer users, the steps that are to be taken by carriers in order to respond to any such bona fide requirements, and the actions, if any, the Commission may be called upon to take in order to assure that the carriers are properly responsive to such requirements.

12. The third remaining issue concerns itself with the privacy and security of data stored in computers that are interconnected with common carrier communications lines. As indicated in our supplemental notice of inquiry, we do not believe that the Commission's concern is coextensive with the entire range of problams which stem from the potential invasion of privacy, where information can be stored and illicitly retrieved from a computer, even though the storage and retrieval is achieved through communications facilities (Supplemental Notice of Inquiry, 7 FCC 2d 19, paragraph 11, at 22 (1967)). The privacy issue in its broadest sense has numerous social and public policy implications which go well beyond the pale of our jurisdiction over communications and which have already been the subject of Congressional studies and hearings, as well as a matter of concern and analysis by social scientists, lawyers, and computer engineers. In this connection, we note that the National Academy of Sciences is conducting an investigation of public and private data banks to determine the magnitude of the threat to individual privacy.

13. The Commission, of course, does have a fixed and continuing responsibility with respect to the privacy and integrity of intelligence traversing the communications networks of this country, as well as with the possible use of such facilities for unlawful purposes. As we indicated in our First Report, we intend to give further consideration to the needs which may exist in this area and

[14] The Commission's MCI decision is pending on review in the U.S. Court of Appeals for the District of Columbia Circuit (American Telephone & Telegraph Co., et al. v. F.C.C., Case Nos. 23959 and 23962).

to the regulatory actions which may be required. We also recognized the need to obtain more information regarding present and future needs and the technical, operational and economic implications, as a basis for such further consideration.

C. Regulation of Data Processing Services.

14. We turn now to the two basic regulatory and policy questions which remain to be resolved in this inquiry. These questions require our determination of:

(a) The nature and extent of the regulatory jurisdiction to be applied to data processing services; and

(b) Whether, under what circumstances, and subject to what conditions or safeguards, common carriers should be permitted to engage in data processing.

15. In our First Report, we noted that before these issues could be resolved, it would be necessary to define as precisely as possible the terms we shall employ so that they could be understood and uniformly applied by all interested parties. In this highly technical and rapidly growing industry, new terms, many of which may overlap in meaning, have proliferated. However useful these terms may be to the data processing community, or any segment thereof, we have concluded that, for our immediate purposes, we need to establish definitions that are as free from ambiguity as language permits. The task of definition is no simple one. This is because computers and communications have become so interdependent and interactive in the transmission and processing of data that sharp delineation of these functions is hardly possible except in somewhat generalized terms. Since our purpose is uniquely that of government regulation, we shall define only those basic terms indispensable to our objective of providing clarity and precision of definition and application. The specific terms which we shall employ are set forth below with their respective definitions:

(a) Data Processing—The use of a computer for the processing of information as distinguished from circuit or message-switching. "Processing" involves the use of the computer for operations which include, inter alia, the functions of storing, retrieving, sorting, merging and calculating data, according to programed instructions.

(b) Message-Switching — The computer-controlled transmission of messages, between two or more points, via communications facilities, wherein the content of the message remains unaltered.[15]

(c) Local Data Processing Service—An offering of data processing wherein communications facilities are not involved in serving the customer.

(d) Remote Access Data Processing Service—An offering of data processing wherein communications facilities, linking a central computer to remote customer terminals, provide a vehicle for the transmission of data between such computer and customer terminals.

(e) Hybrid Service—An offering of service which combines Remote Access data processing and message-switching to form a single integrated service.

16. With the foregoing definitions in mind, we shall revert now to the basic questions before us, namely, the nature and extent of the regulatory jurisdiction to be applied to data processing and the related issue of whether, and under which circumstances, common carriers should be permitted to furnish data processing services.

17. It is clear, and needs no elaboration or lengthy discussion here, that the Communications Act of 1934 confers comprehensive powers upon the Commission to regulate the rendition for hire of interstate and foreign communications services by wire and radio and all persons engaged in such services. Congress in 1934 acted in a field that was demonstrably both new and dynamic, and it therefore gave the Commission a comprehensive mandate, with not niggardly but expansive powers. (U.S. v. Southwestern Cable Company, 392 U.S. 157, 173 (1968).) Communications by wire or radio is broadly defined in the Act to mean:

"* * * (T)he transmission of writing, signs, signals, pictures, and sounds of all kinds * * * between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission." (47 U.S.C. § 153(a)(b).)

As the court pointed out in the Philadelphia Broadcasting Case:

"Congress in passing the Communications Act of 1934 could not, of course, anticipate the variety and nature of methods of communication by wire or radio that would come into existence in the decades to come. In such a situation, the expert agency entrusted with administration of a dynamic industry is entitled to latitude in coping with new developments in that industry." (Philadelphia Television Broadcasting Company v. FCC, 359 F. 2d 282, 284 (D.C. Cir. 1966).)

18. Thus, the Commission was given the power to exercise regulatory jurisdiction over communications facilities and services not in existence, or even anticipated, at the time the Communications Act of 1934 was enacted. On the other hand, we are not required to assert and exercise such jurisdiction merely because we might construe the activity as one which could be encompassed within the intent of the Communications Act of 1934. Instead, as the court in Philadelphia (supra) noted, as the expert agency we are "entitled to latitude in coping with new developments" in the dynamic field of communications. Consequently, we are "entitled to some leeway in choosing which jurisdictional base and which regulatory tools will be most effective in advancing the Congressional objective"—the protection of the public interest. (Philadelphia, supra.)

19. It appears to us that in reaching a decision as to how we are to exercise our discretion, we should look to the basic purpose of regulatory activity in the context of our general national policy, as well as the specific statutory guidelines given this agency. In this country we rely upon the "free enterprise" system with the maximum possible latitude for individual initiative to enter into any given enterprise and compete for the available business. Our antitrust laws are designed to prevent restraint of trade. Government intervention and regulation are limited to those areas where there is a natural monopoly, where economies of scale are of such magnitude as to dictate the need for a regulated monopoly, or where such other factors are present to require governmental intervention to protect the public interest because a potential for unfair practices exists.

20. Applying these standards to the record before us we conclude that the offering of data processing services is essentially competitive and that, except to the limited extent hereinafter set forth, there is no public interest requirement for regulation by Government of such activities.

Thus, there is ample evidence that data processing services of all kinds are becoming available in larger volume and that there are no natural or economic barriers to free entry into the market for these services. The number of data processing bureaus, time sharing systems, and specialized information services is steadily increasing and there are no indications that any of these markets are threatened with monopolization.

21. Competition among and between these entities is active and growing because of the varied service requirements of customer prospects. It is estimated that there are more than 800 service bureaus offering data processing services through some 2,000 branch offices. It is also estimated that service bureau annual sales to over 100,000 customers exceed $900 million and will climb to $1.2 billion by 1972. In addition, it is estimated that more than 5,000 data processing companies have sold excess computer time and capacity on their systems, and over 1,000 banks have offered data processing services to their customers, producing revenues ranging from $158 million to $315 million annually. For a relatively small capital investment, a service firm can be formed, computer equipment can be leased, and programers can be hired. The factors which mark the difference between service bureau success or failure are imaginative innovation, quality programing, and useful service features, rather than the size of the staff or the computing installation. Growing in significance, also, are the specialized subscription services wherein service bureaus cater to the particular needs of various segments of the business world. For example, legal, medical, credit and stock quotation service offerings by data processing organizations are growing in number and complexity. The increasing popularity of time-sharing, wherein several remote users can gain concurrent access to the same central computer, offers a subscriber significant economies in light of the fact that he need not purchase or lease his own system. In 1967, time-sharing constituted a $50 million market, rose to $180 million in 1968, and is projected by some to rise to $900 million by 1972. The foregoing facts plus the existing and growing competition among service bureaus supports the conclusion that the offering of data processing services is open to companies of all sizes.

[15] Message-switching should be distinguished from circuit-switching notwithstanding the fact that both functions involve the interconnection or transfer of electric signals from one channel to another. Historically, circuit-switching, typified by the telephone industry, involved a carrier's providing its customer with exclusive use of an open channel for direct electrical connection between two or more points.

Message-switching, typified by the telegraph industry, involved a carrier's transmission over its facilities of a customer's set message at a charge based upon the information sent. Connection was indirect in the sense that there occurred a temporary storage or delay of signals prior to forwarding the message to its ultimate destination. In effect, message-switching is essentially a "store and forward" function with respect to predetermined information; circuit-switching, on the other hand, involves the establishment of a completed transmission path prior to the communication of any information. The computer, because of its great speed, has so reduced time delay with respect to message-switching that historical distinctions in switching have become blurred. However, the role of the computer in circuit-switching still remains distinct from that of a computer in message-switching. Although its serves as the "control" element in basic functions, in a circuit-switched network, the actual information flow is through a switching matrix—not the computer; in message-switching, any information transmitted from terminal points must necessarily pass through and undergo some processing by the computer mainframe (See In the Matter of The Western Union Telegraph Company, Tariff FCC No. 251 Applicable to SICOM Service, 11 FCC 2d 1 (1967)).

22. In view of all of the foregoing evidence of an effective competitive situation, we see no need to assert regulatory authority over data processing services whether or not such services employ communications facilities in order to link the terminals of the subscribers to centralized computers. We believe the market for these services will continue to burgeon and flourish best in the existing competitive environment.

23. We expect the competitive environment within which data processing services are now being offered to result in substantial public benefit by making available to the public, at reasonable charges, a wider range of existing and new data processing services. We believe that these expectations will continue to be realized in the free give-and-take of the market place without the need for, and possible burden of rules, regulations and licensing requirements. However, if there should develop significant changes in the structure of the data processing industry, or, if abuses emerge which require the exercise of corrective action by the Commission, we shall not hesitate to re-examine the policies set forth herein.

D. *Common Carriers and Data Processing.* 24. We turn now to the problems posed by the provision of data processing services by common carriers. We have already concluded that so long as the data processing industry continues to retain its present competitive structure, such services should not be subject to common carrier regulation. This conclusion has a significant impact on the major common carrier, the American Telephone and Telegraph Co. (A.T. & T.). A.T. & T. and its affiliated companies are subject to a consent judgment which, with exceptions not applicable hereto, prohibits A.T. & T. and its affiliated companies from engaging in any business other than the furnishing of regulated common carrier services.[2] It follows then that these companies cannot furnish data processing services. Other than this we know of no provision of law which prohibits or bars any other nonregulated service subject to certain safeguards.[3] To the contrary, our rules contemplate that other services may be furnished by such carriers and prescribe the methods of accounting for the reporting with respect to such services.[4]

25. We recognize, however, that the provision of other services and, particularly data processing services by common carriers, may give rise to critical problems of unfair competition and cross-subsidy. In fact, one of the major concerns raised by many respondents to our notice of inquiry relates to the participation of communications common carriers in the provision of data processing services without essential protection against such unfair competition. These concerns stem from the potential of common carriers to subsidize their data processing operations with revenues and resources available from their regulated services thereby enabling them to dominate the data processing market by underpricing their data processing services. A further concern arises from the fact that carriers engaging in remote access data processing will be providing the communications component of the service to themselves, as well as to their computer service competitors in the same business. Here it is feared that the carriers may favor their own interests and discriminate against their competitors in the prices and practices established for data communication facilities. It is also alleged that the furnishing of data processing services by a carrier can result in burdening or impairing the carrier's provision of its other regulated services, including increasing the costs of those services to the public.

26. Because of these concerns, many of the respondents advocate that carriers be either totally barred from providing data processing services or that they be subjected to strict safeguards designed to prevent possible discrimination or anticompetitive practices.

27. On the other hand, certain of the carrier respondents contend that the Commission does not possess the necessary legal power to prevent communications common carriers from providing data processing services. We recognize that these conflicting contentions raise a question of the nature and extent of our legal power over the provision of data processing services by common carriers, to which we will now address ourselves.

27a. First, as already noted, there is no specific provision which bars a common carrier from providing nonregulated services and that many carriers do, in fact, provide such services. It does not follow, however, that the Commission may not exercise its jurisdiction over carriers to prescribe appropriate conditions for engaging in nonregulated services or to prohibit the furnishing of such services where such activities burden or impair their common carrier communications obligations.

28. In this connection, we are aware that the Communications Act grants a broad range of powers to the Commission with respect to carriers subject to its jurisdiction in order to effectuate the policies and objectives of the Act. Thus, the Commission has the power to require a common carrier to furnish interstate communications service "upon reasonable request therefor," 47 U.S.C. 201 (a); to determine what are just and reasonable common carrier charges, practices, classifications, and regulations for and in connection with interstate communication, and to prescribe such rules and regulations as are "necessary in the public interest" to assure the justness and reasonableness of all such charges, practices, classifications and regulations, 47 U.S.C. 201(b); to prevent unjust discrimination for or in connection with any such interstate service, 47 U.S.C. 202(a); to prescribe just, reasonable and nondiscriminatory common carrier charges, practices, classifications and regulations; and to issue appropriate orders with respect thereto, 47 U.S.C. 205(a); to control the acquisition, extension, construction or operation of lines by common carriers and to impose conditions in certificates and authorizations issued to common carriers for such lines as the public convenience and necessity may require, 47 U.S.C. 214 (a) and (c); to examine transactions entered into by common carriers which may affect charges or services, 47 U.S.C. 215(a); to classify common carrier radio stations and prescribe the nature of the services to be rendered by each such class, 47 U.S.C. 303 (a) and (b); to assess the value of all of the properties of a carrier, 47 U.S.C. 213; to deny common carrier radio applications, after hearing, upon a finding that the public interest, convenience or necessity would not be served by a grant thereof, 47 U.S.C. 309; to modify, after hearing, existing common carrier radio authorizations if public interest, convenience, or necessity would be served thereby, 47 U.S.C. 316; to prescribe the accounting and reporting to be performed by common carriers; 47 U.S.C. 220; and to adopt rules and regulations and issue orders consistent with the Act as may be necessary in the execution of the Commission's functions, 47 U.S.C. 154(i). Moreover, it is well settled that the Commission, in executing its statutory obligations, is required to consider and evaluate all relevant factors, including national policies relating to competition, monopolies or combinations, contracts or agreements in restraint of trade and, in the case of sections 2, 3, and 7 of the Clayton Act, to enforce those statutes in their application to common carriers subject to the Commission's jurisdiction, 47 U.S.C. 602(d).

29. From the foregoing, it is clear that we have the power necessary to insure that common carriers provide efficient and economical communications services. Thus, if the provision of data processing services by a common carrier were to have a substantial adverse effect upon the provision of regulated common carrier communication services or otherwise resulted in an impairment or lessening of competition, we could take such corrective action as we found necessary to insure that the required communication services are furnished, 47 U.S.C. 201(a), 214(d). Upon consideration of the totality of these powers and authority, we conclude that we have ample jurisdiction to bar carriers from providing data processing services upon a proper finding that it would prevent them from discharging their common carrier responsibilities in a manner consistent with the standards and objectives of the Communications Act. We, therefore, also have the jurisdiction and authority to surround the provision of these services with such appropriate safeguards as may be necessary to carry out the policies and objectives of the Communications Act.

30. Having determined the scope and extent of our powers, we turn now to the question of how they should be exercised herein. In this connection we have the benefit of the SRI study made for us. This study analyzed the potential benefits which might flow from the provision of data processing services by carriers, as well as the potential dangers involved.

31. Three possible benefits which SRI felt might be expected to flow from permitting carriers to enter data processing were: greater competition and innovation therein; exploitation of possible significant economies, both technical and managerial, of integrated operation; and provision of an opportunity for diversification by The Western Union Telegraph Co. SRI concludes that all but the last of the aforementioned possible benefits seem remote and hypothetical at the present time. It identifies two possible costs associated with permitting carriers to enter data processing service. One is that the task of regulating carriers in their communications markets would be complicated. The other is that the carrier might, through predatory price cutting, come to dominate or monopolize the data processing industry. SRI concludes that the danger of regulatory complication seems real but is difficult to quantify, that there is no real danger of predatory price cutting by Western Union since it has no reserve or monopoly power to support a period of below-cost pricing without bankruptcy, and that the danger of such predatory price cutting by the non-Bell telephone companies is less clear, but should not be altogether excluded.

32. SRI suggests three possible regulatory alternatives: free entry; absolute prohibition against entry; and entry under regulatory

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[2] United States v. Western Electric Co., Inc., and American Telephone and Telegraph Company, (consent judgment), 13 RR 2143; 1956 Trade Cases 71,134 filed January 24, 1956, D.C. N.J. (See also par. 43 herein.)

[3] See letter from E. William Henry, Chairman, Federal Communications Commission, to the Honorable James Roosevelt, Chairman, Subcommittee on Distribution, Select Committee on Senate Business, House of Representatives, November 5, 1964 (FCC File No. 9316), regarding The Western Union "Flowers by Wire" Service.

[4] For example, communications common carriers with separate departments or divisions for the conduct of common carrier and noncommon carrier activities must file with the Commission separate supplemental annual reports with respect to each of the activities. 47 CFR 43-21(b).

safeguards that could include (a) subjecting a carrier's data processing services to minimum rate regulation by the Commission, and (b) requiring carriers to segregate their accounting for communications and local data processing services. Essentially, however, SRI recommends that, for the immediate future, we should adopt a wait-and-see policy coupled perhaps with permission to Western Union to offer local data processing service subject to reasonable safeguards. In this connection, SRI makes reference to the contract arrangements between Western Union and the Bell System telephone companies whereby these companies exchange facilities at payments allegedly lower than the public tariff charges would be for similar service. SRI, therefore, suggests that, if Western Union is permitted to engage in remote access data processing, the Commission should perhaps require the Bell System to provide facilities to other data processors on the same terms and conditions.

33. The dangers identified by respondents and by the SRI study relate primarily to the alleged ability of common carriers to favor their own data processing activities by discriminatory services, cross subsidization, improper pricing of common carrier services, and related anticompetitive practices and activities. We recognize that these dangers may be real and could have substantial adverse effects on noncarrier data processing companies. We are confident, however, that the steps we are taking herein will provide adequate protection against possible abuses. On the other hand, the additional competitive spur provided by carrier participation in data processing can and should, with the specific safeguards, promote innovation, efficiency, economy, and diversity with resulting new and improved services at lower prices to the users of data processing.

E. *Regulatory Safeguards.* 34. It is our view that any regulatory safeguards promulgated with respect to the sale of data processing services by communications common carriers should seek to assure (a) that such services will not adversely affect the provision of efficient and economic common carrier services; (b) that the costs related to the furnishing of such services will not be passed on, directly or indirectly, to the users of common carrier services; (c) that revenues derived from common carrier services will not be used to subsidize any data processing services; and (d) that the furnishing of such services will not inhibit free and fair competition between communication common carriers and data processing companies or otherwise involve practices contrary to the policies and prohibitions of the antitrust laws.

35. We believe that these objectives will be achieved best by a maximum separation of activities which are subject to regulation from nonregulated activities involving data processing. Because of the increasing involvement of interstate communications facilities and services in the provision of data transmission, the need for such separation is apparent and urgent. This need exists whether or not at the present time the carrier is engaged in the sale of local or remote access data processing. In either instance, there is a potential for abuse in the form of a commingling of costs associated with the rendition of communication and data processing services, which can give rise to the above-discussed problems of cross-subsidization and other unfair competitive practices in the pricing of regulated and nonregulated services. Also, such commingling of operations and related costs will unduly complicate the task of effective regulation of the communication rates and services of common carriers. It will tend to obscure, if not defeat, the ready identification and allocation for accounting and rate-making purposes of the costs associated with each activity.

36. Accordingly, we are hereby adopting a policy that communications common carriers shall furnish data processing services only through separate corporate entities. This requirement shall be applicable to all communications common carriers engaged in interstate or foreign communications services, including connecting carriers within the meaning of section 2(b) (2), (3), and (4) of the Communications Act, where any such carrier itself has annual operating revenues exceeding $1 million or any any such carrier is directly or indirectly controlled by or is under common control with another carrier or carriers and the combined annual operating revenues of all such carriers exceed $1 million.[8] Each such data processing entity shall be staffed with separate officers and operating personnel and shall use equipment and facilities devoted exclusively to the rendition of data processing and other noncommon carrier services. We shall also require that the data processing affiliate maintain its own books of account and file with the Commission separate annual and other reports as may be prescribed by the Commission pursuant to section 218 of the Communications Act. Further, we shall require the submission by the carrier (whether the carrier be a parent or subsidiary) of all intercorporate agreements and memoranda of any arrangements between the carrier and its affiliate. When such separate corporate entity obtains communications facilities or services from its affiliated common carrier (whether parent or subsidiary) it will be required to do so pursuant to the same tariff terms, conditions, and practices as are applicable to any other customer of the carrier, and specifically, on terms and conditions no more favorable than those offered to other unaffiliated entities. Moreover, we shall require that no carrier subject to the aforementioned conditions engage in the sale or promotion of data processing activities on behalf of its data processing affiliate. Finally, we will expect any affiliate of a common carrier to permit reasonable interconnection with facilities of the customer.

37. The foregoing conditions, in our judgment, will enable this Commission, as well as regulatory agencies of the several States to discharge their regulatory responsibilities with respect to the maintenance of adequate and efficient common carrier communications services at reasonable and nondiscriminatory rates and practices. They will also, in our judgment, be conducive to removing possible anticompetitive practices and avoid the invocation of corrective measures that might otherwise be called for. Separate books of account, managerial and operating personnel and physical facilities will facilitate a more efficient identification and tracing of costs and revenue flows than would be possible if the common carrier communications and data processing activities were combined in one corporate entity. The furnishing of communications services and facilities by the carrier to its data processing affiliate would, in all cases, be pursuant to a tariff, and thus made available on the same terms and conditions applicable to like services or facilities furnished to any other purveyor or user of data processing services, thereby minimizing the risks of undue discrimination in violation of section 202(a) of the Communications Act. We expect that under no circumstances will carriers give any preferential treatment to their data processing affiliates and that carriers will scrupulously administer the terms and conditions of tariffs in making their facilities and services available to affiliates and nonaffiliates on a nondiscriminatory and nonpreferential basis. These constraints will also meet the concern expressed by SRI that the Bell System companies provide no preferential treatment to Western Union not available to all other processors since the data processing affiliate of Western Union will be required to pay the same tariff rates for common carrier services as will its competition. The Bell System, subject as it is to the proscriptions of the Western Electric consent judgment, supra Note 2, is, of course, foreclosed from the sale of data processing services since such services will not be tariffed. Finally, the separation of accounts and activities required herein, including the prohibition against any carrier marketing data processing services on behalf of its affiliate, will mitigate any unfair competitive advantage that might otherwise enure to the data processor by virtue of its affiliation with a communications common carrier.

38. It is noteworthy that, in varying degrees, the safeguards provided for above, have already been implemented by the larger interstate common carrier systems. Western Union, General Telephone and Electronics, and United Utilities have organized or acquired separate affiliates for the promotion and sale of data processing services. We intend to conduct a full and comprehensive review of those affiliated organizations and their operations to insure that they are in full compliance with policies promulgated herein. We shall require in this regard that each such company, within 60 days from the effective date of the final decision herein, submit in writing a full description of the organization, facilities and operations of their data processing affiliates, together with copies of all agreements and memoranda or other arrangements between carrier and affiliate. Other carriers, who may not have already established such arrangements to separate their communications activities from the sale of data processing services shall do so within 6 months from the effective date of any rules adopted to implement this policy.

F. *The Hybrid Service.* 39. We turn now to those offerings of service which combine data processing and message-switching to form a single integrated service we have defined hereinbefore as a hybrid service. We have already made it clear that it is not our intention to assert direct regulatory jurisdiction over the sale of data processing whether engaged in either by conventional communication common carriers or other entities despite the employment of communications facilities to accomplish the data processing. When, however, data processing is combined with message-switching, a different question is presented. This is because message-switching is, in essence, an operation which is inherent in the process of transmitting, by wire or radio, intelligence or data from point of origin to point of destination. As in the case of remote access data processing, user terminals are linked to the central computer by communications channels. Thus, it is possible for users not only to have on-line communication with the computer for data processing purposes, but it is also possible for such users to have the means of communicating with each other when the computer is programed to switch messages of one to another. Unlike data processing, however, the computer, when and if used for message-switching, does not alter the content of the

[8] We have designed this safeguard with a view toward avoiding an imposition of any requirement on smaller common carriers which might be onerous or burdensome from the standpoint of the size of the company's market and operations. Hence, we have used the same criterion in this regard as we apply to reporting requirements for telephone carriers whose revenues do not exceed $1 million annually.

intelligence transmitted. It simply performs the function of storage and either immediate or delayed forwarding of the message to its addressed destination. In this respect the computer takes the place of the manual or electromechanical switching or relay operations which are typically involved in the transmission of intelligence for hire by communications common carriers.

40. The specific question presented is, under what circumstances should a message-switching capability, when offered in combination with data processing services, be treated as a sale of communication for hire subject to regulation under the Communications Act as are other communications services offered for hire by common carriers? There is no pat formula which provides the answer to this question because of the wide range of service arrangements that are possible and actually obtain. However, we believe that we can state certain general principles that will apply in the determination of these questions in particular cases.

41. It is our position that where message-switching is offered as an integral part of and as an incidental feature of a package offering that is primarily data processing, there will be total regulatory forebearance with respect to the entire service whether offered by a common carrier or noncommon carrier, except to the extent that common carriers offering such a hybrid service will do so through affiliates and will be subject to regulatory safeguards as discussed above.

42. If, on the other hand, the package offering is oriented essentially to satisfy the communications or message-switching requirements of the subscriber, and the data processing feature or function is an integral part of and incidental to message-switching, the entire service will be treated as a communications service for hire, whether offered by a common carrier or noncommon carrier and will be subject to regulation under the Communications Act. One applicable test will be whether the service, by virtue of its message-switching capability, has the attributes of the point-to-point services offered by conventional communications common carriers and is, basically, a substitute therefor. Another test will be the extent to which the message-switching feature of the service facilitates or is related to the data processing component, or whether such message-switching is essentially independent of such data processing. In effect, we shall address ourselves to the facts surrounding a package offering with a view toward determining the primary thrust of the service offered.

43. We deem it important that these distinctions be carefully applied and that the essential nature of the service as primarily data processing or communication not be artificially obscured. In the case of A.T. & T. and related Bell System companies, these distinctions are significant since such companies are foreclosed by the A.T. & T. Consent Judgment (supra) from rendering nontariffed services. Insofar as data processing is incidental to communications within the meaning of paragraph V(g) of the Consent Judgment, as well as our policy statement herein, A.T. & T., and its affiliated operating companies are free to furnish such a service. We intend to maintain a careful and continuous observation of the activities of the Bell System companies in their use and application of computer technology for both communications and administrative purposes, to the end that such companies shall not offer data processing which is not clearly incidental to communications within the meaning of the Consent Judgment and this policy statement.

44. Similarly, in the case of Western Union, we have already had occasion to consider the status of its SICOM and INFOCOM services. We determined in 1967 that both of these services were common carrier communications offerings in which computers were being used to provide a transmission service that included the kind of message-switching function traditionally performed by communications common carriers, as well as other functions directly related to switching, such as error checking, format control, and the like (In the Matter of SICOM, supra, at 9–12). We stated further that if the services were broadened to include an offer to perform data processing services other than the aforementioned message-switching or related functions, the tariffs might be subject to rejection as offering noncommon carrier, noncommunications services (In the Matter of SICOM, supra, at 12). Under our decision herein, Western Union would be permitted to continue to offer these services as tariffed common carrier communications services. However, we shall expect any changes in the SICOM or INFOCOM services to be reflected in appropriate tariff revisions which shall thereupon be closely scrutinized by the Commission in order to determine whether the modifications have altered the status of these services under the Communications Act. If our examination reveals services of primarily data processing, we would require Western Union to withdraw its tariffs and provide such revised offerings through a separate corporate entity under our safeguard rules.

45. We have heretofore deferred action on the question of whether certain computerized switching services for airlines offered by two existing common carriers, RCA and ITT, should be covered by tariffs filed with us. (See Letters from the Federal Communications Commission to RCA Communications, Inc., and ITT World Communications, Inc., Dec. 20, 1967 (FCC File No. 9510).)

Our decision herein would require tariffs for such services to be filed since they are not hybrid offerings exempted from regulation. However, if the switching services were broadened to include substantially data processing, they would be treated by the Commission in the same manner as would an altered SICOM or INFOCOM service.

46. In view of all of the foregoing, the Commission proposes (a) to adopt the foregoing decision; (b) to adopt rules to implement the aforesaid decision (Appendix B); and (c) to terminate this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

ATTACHMENT A

ITEMS OF INQUIRY (7 FCC 2d 11, 17, 18)

A. Describe the uses that are being made currently and the uses that are anticipated in the next decade of computers and communication channels and facilities for:

1. Message or circuit switching (including the storage and forwarding of data);
2. Data processing;
3. General or special information services;
4. Any combination of the foregoing.

B. Describe the basis for and structure of charges to the customers for the services listed in A above.

C. The circumstances, if any, under which any of the aforementioned services should be deemed subject to regulation pursuant to the provisions of title II of the Communications Act:

1. When involving the use of communication facilities and services;
2. When furnished by established communication common carriers;
3. When furnished by entities other than established communication common carriers.

D. Assuming that any or all of such services are subject to regulation under the Communications Act, whether the policies and objectives of the Communications Act will be served better by such regulation or by such services evolving in a free, competitive market, and if the latter, whether changes in existing provisions or law or regulations are needed.

E. Assuming that any and all of such services are not subject to regulation under the Communications Act, whether public policy dictates that legislation be enacted bringing such services under regulation by an appropriate governmental authority, and the nature of such legislation.

F. Whether existing ratemaking, accounting, and other regulatory procedures of the Commission are consistent with insuring fair and effective competition between communications common carriers and other entities (whether or not subject to regulation) in the sale of computer services involving the use of communications facilities; and, if not, what changes are required in these procedures.

G. Whether the rate structure, regulations and practices contained in the existing tariff schedules of communications common carriers are compatible with present and anticipated requirements of the computer industry and its customers. In this connection, specific reference may be made to those tariff provisions relating to:

1. Interconnection of customer-provided facilities (owned or leased) with common carrier facilities, including prohibitions against use of foreign attachments;
2. Time and distance as a basis for constructing charges for services;
3. Shared use of equipment and services offered by common carriers;
4. Restrictions on use of services offered, including prohibitions against resale thereof.

H. What new common carrier tariff offerings or services are or will be required to meet the present and anticipated needs of the computer industry and its customers.

I. The respects in which present-day transmission facilities of common carriers are inadequate to meet the requirements of computer technology, including those for accuracy and speed.

J. What measures are required by the computer industry and common carriers to protect the privacy and proprietary nature of data stored in computers and transmitted over communication facilities, including:

1. Descriptions of those measures which are now being taken and are under consideration; and
2. Recommendations as to legislative or other governmental action that should be taken.

ATTACHMENT B

RESPONSES TO INITIAL INQUIRY IN DOCKET 16979

A. Data Processing Industry:
Association of Data Processing Service Organizations.
The Bunker-Ramo Corp.
Business Equipment Manufacturers Association.
Central Information Processing Corp.
Computing and Software, Inc.
Control Data Corp.
Electronic Industries Association.
General Electric Co.
International Business Machines.
Law Research Service.
North American Computer and Communications Co.
Spindletop Research.
UNIVAC Division Sperry Rand Corp.
University Computing Co.
Van Horn Information Processing Systems Corp.
Xerox Corp.

B. Communications Industry:
American Telephone and Telegraph Co.
Collins Radio Co.

Communications Satellite Corp.
Electrospace Corp.
General Telephone and Electronics Service Corp.
International Telephone and Telegraph Corp.
Microwave Communications, Inc.
RCA Communications, Inc.
Rixon Electronics, Inc.
Technical Communications Corp.
U.S. Independent Telephone Operators.
Western Union International, Inc.
Western Union Telegraph Corp.

C. Commercial Users of Data Systems:
Aeronautical Radio, Inc.
Aerospace Industries Association of America, Inc.
Aetna Life and Casualty Co.
American Bankers Association.
American Business Press, Inc.
American Newspaper Publishers Association.
American Petroleum Institute.
American Trucking Associations, Inc.
Association of American Railroads.
Credit Data Corp.
Eastern Airlines, Inc.
Humble Oil and Refining Co.
Lockheed Aircraft Corp.
McGraw-Hill, Inc.
National Association of Manufacturers.
National Committee for Utilities Radio.
National Retail Merchants Association.
Société Internationale de Télécommunications Aeronautiques.
Union Pacific Railroad Co.
United Air Lines, Inc.

D. Government and Other:
American Institute of Industrial Engineers.
Association for Computing Machinery.
California Public Utilities Commission.
Executive Agencies of the United States.
Federal Reserve Board.
Institute for Electrical and Electronics Engineers, Inc.
Interuniversity Communications Council (EDUCOM).
U.S. Department of Justice.
National Association of Regulatory Utility Commissioners.
National Physical Laboratory of the Ministry of Technology.
University of Maine.

ATTACHMENT C

RESPONSES TO REPORTS OF STANFORD RESEARCH INSTITUTE IN DOCKET 16979

A. Data Processing Industry:
Association of Data Processing Service Organizations.
Business Equipment Manufacturers Association.
Communication and Control Inc.
Electronics Industries Association.
International Business Machines.
National Association of Manufacturers.

B. Communications Industry:
Bell System Companies.
International Telephone and Telegraph Corp.
Microwave Communications, Inc.
RCA Global Communications, Inc.
United States Independent Telephone Association.
United Utilities, Inc., et al.
United Telecommunications Council.
Western Union Telegraph Co.

C. Commercial Users of Data Systems:
American Petroleum Institute.
Credit Data Corp.
Eastern Airlines, Inc.
Market Monitor Data, Inc.
Southern Pacific Co.
United Air Lines, Inc.

D. Government and Other:
Executive Agencies of the United States.

APPENDIX B

PROPOSED ADDITION TO PART 64 OF THE COMMISSION RULES

Part 64 is amended by the addition of a new Subpart F and a new § 64.702, as follows:

Subpart F—Participation in Data Processing by Communications Common Carriers

§ 64.702 Furnishing of Data Processing Services.

(a) No common carrier subject, in whole or in part, to the Communications Act shall engage directly or indirectly in furnishing data processing service to others except as expressly provided in paragraph (b) of this section. This prohibition shall apply to all communications common carriers, including section 2(b)(2) carriers, where any carrier itself has annual operating revenues exceeding $1 million or any such carrier is directly or indirectly controlled by, or is under common control with, another carrier or carriers, and the combined annual revenues of all such carriers exceed $1 million.

(b) Except for the Bell System companies, common carriers may, subject to other provisions of law, have a controlling or lesser interest in, or be under common control with, a separate corporate entity that furnishes data processing service to others provided the following conditions are met:

(1) Each such separate corporation must maintain its own books of account, have separate officers, utilize separate operating personnel, and use equipment and facilities devoted exclusively to the rendition of data processing services;

(2) Each such common carrier shall file with the Commission a complete statement of the terms and conditions of every written or oral contract, agreement or other arrangement entered into between such carrier and any such separate corporation; and

(3) No carrier subject to the prohibition of paragraph (a) of this section shall engage in the sale or promotion of data processing services on behalf of its data processing affiliate.

[F.R. Doc. 70-4347; Filed, Apr. 8, 1970; 8:50 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Internal Revenue Service

ROBERT LESLIE BARNHILL

Notice of Granting of Relief

Notice is hereby given that Robert Leslie Barnhill, 4708 North Bristol, Kansas City, Mo., has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his convictions on July 15, 1943, in the Circuit Court of Jackson County, Kansas City, Mo., of crimes punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Robert Leslie Barnhill because of such convictions, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such convictions, it would be unlawful for Mr. Barnhill to receive, possess, or transport in commerce, any firearm.

Notice is hereby given that I have considered Robert Leslie Barnhill's application and:

(1) I have found that the convictions were made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the convictions and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that Robert Leslie Barnhill be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the convictions hereinabove described.

Signed at Washington, D.C., this 2nd day of April 1970.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 70-4339; Filed, Apr. 8, 1970; 8:49 a.m.]

RICHARD L. SMITH

Notice of Granting of Relief

Notice is hereby given that Pfc. Richard L. Smith, 493 52 6487, 591 M.P. Co., Fort Bliss, Tex. 79916, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on October 4, 1966, before Circuit Court of Ripley County, Ripley County, Mo., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Richard L. Smith because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Richard L. Smith to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Richard L. Smith's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that Richard L. Smith be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 1st day of April 1970.

[SEAL] WILLIAM H. SMITH,
Acting Commissioner of Internal Revenue.

[F.R. Doc. 70-4340; Filed, Apr. 8, 1970; 8:50 a.m.]

MAX FRANK DEMANSKI

Notice of Granting of Relief

Notice is hereby given that Max Frank Demanski, 19945 Mackay, Detroit, Mich., has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on January 17, 1930, in the Wayne County Circuit Court, Detroit, Mich., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Max Frank Demanski because of such conviction, to ship, transport or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Mr. Demanski to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Max Frank Demanski's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that Max Frank Demanski be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 2d day of April 1970.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 70-4341; Filed, Apr. 8, 1970; 8:50 a.m.]

CHARLIE WILTON WOODS

Notice of Granting of Relief

Notice is hereby given that Charlie Wilton Woods, Route No. 1, Ferrum, Va. 24088, has applied for relief from disabilities imposed by Federal laws with

respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on July 6, 1933, in the U.S. District Court, Roanoke, Va., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Charlie Wilton Woods because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Charlie Wilton Woods to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Charlie Wilton Woods' application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that Charlie Wilton Woods be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 1st day of April 1970.

[SEAL] WILLIAM H. SMITH,
Acting Commissioner of Internal Revenue.

[F.R. Doc. 70-4342; Filed, Apr. 8, 1970; 8:50 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 9504]

COLORADO

Notice of Proposed Classification of Public Lands

MARCH 27, 1970.

Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411–18), and to the regulations in 43 CFR Parts 2410 and 2411, it is proposed to classify public lands described below for disposal through public sale under the Act of September 26, 1968 (43 U.S.C. 1431–1435, Supp. IV 1968). As used herein "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269) as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

Publication of this notice has the effect of segregating all the lands described below from all forms of appropriation except from sale under the Act of September 26, 1968 (43 U.S.C. 1431–1435) (Supp. IV 1968).

This proposal has been discussed with the local governmental officials; the District Advisory Board; and other interested parties. Information obtained from field data, discussions with the public and other sources indicate that these lands meet the criterion of 43 CFR 2410.1–3(a), which authorizes classification of lands for disposal under appropriate authority where such lands are found to be chiefly valuable for disposal, for grazing use and other values and which lands are not needed for the support of a Federal program.

The public lands proposed for classification are located within the following described area and are shown on maps on file in the Grand Junction District Office, Bureau of Land Management, Grand Junction, Colo., and at the Land Office, Bureau of Land Management, Room 15019, Federal Building, 1961 Stout Street, Denver, Colo. 80202. For a period of 60 days from date of this publication, interested parties may submit comments to the District Manager, Bureau of Land Management, 223 Federal Office Building, Post Office Box 1509, Grand Junction, Colo. 81501:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 9 S., R. 94 W.,
Sec. 18, lot 1, SE¼NE¼, SE¼SW¼, SW¼SE¼;
Sec. 32, NE¼NE¼;
Sec. 33, NW¼SE¼.
T. 10 S., R. 94 W.,
Sec. 19, lots 3 and 4.

The total area involved aggregates approximately 280 acres of public land in Mesa County.

E. I. ROWLAND,
State Director.

[F.R. Doc. 70-4307; Filed, Apr. 8, 1970; 8:47 a.m.]

[Colorado 9504]

COLORADO

Notice of Proposed Classification of Public Lands

MARCH 27, 1970.

Notice is hereby given of a proposal to classify the lands described below for disposal through exchange under section 8 of the Taylor Grazing Act (43 U.S.C. 315g), for lands within Mesa County, Colo. This publication is made pursuant to the Act of September 19, 1964 (43 U.S.C. 1412).

This proposal has been discussed with the District Advisory Board, local governmental officials, and other interested parties. Information derived from discussions and other sources indicate that these lands meet the criterion of 43 CFR 2410.13(c)(4), which authorizes classification of lands "for exchange under appropriate authority where they are found to be chiefly valuable for public purposes because they have special values, arising from the interest of exchange proponents, for exchange for other lands which are needed for the support of a Federal Program." Information concerning the lands, including the record of public discussions, is available for inspection and study at the Grand Junction District Office, Bureau of Land Management, Federal Building, Fourth and Rood, Grand Junction, Colo. For a period of 60 days from the date of this publication, interested parties may submit comments to the district manager of the Grand Junction district.

The lands affected by this proposal are located in Mesa County and are described as follows:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 9 S., R. 93 W.,
Sec. 1, lot 1, SE¼NE¼, E½SE¼;
Sec. 2, S½SW¼;
Sec. 10, SE¼NE¼;
Sec. 12, NE¼NE¼, NE¼SE¼;
Sec. 13, SW¼SW¼;
Sec. 14, SE¼, SE¼;
Sec. 18, lot 1, SW¼NE¼;
Sec. 22, SE¼SE¼;
Sec. 24, E½W½;
Sec. 31, N½SE¼, NE¼SW¼;
Sec. 34, SE¼SE¼;
Sec. 35, NE¼NW¼, SW¼NW¼, W½SW¼.
T. 9 S., R. 94 W.,
Sec. 2, SE¼SW¼;
Sec. 3, S½NE¼;
Sec. 11, E½NW¼.
T. 10 S., R. 94 W.,
Sec. 4, S½SE¼.
T. 10 S., R. 96 W.,
Sec. 25, SW¼SW¼;
Sec. 26, SE¼NW¼.

Containing 831.59 acres.

E. I. ROWLAND,
State Director.

[F.R. Doc. 70-4308; Filed, Apr. 8, 1970; 8:47 a.m.]

[Colorado 9504]

COLORADO

Notice of Proposed Classification of Public Lands

MARCH 27, 1970.

Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411–18), and to the regulations in 43 CFR Parts 2410 and 2411, it is proposed to classify public lands described below for disposal through the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869–1 to 869–4). As used herein "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as

amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269) as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

Publication of this notice has the effect of segregating all the lands described below from all forms of appropriation except from disposal under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869–1 to 869–4).

This proposal has been discussed with the local governmental officials; the District Advisory Board; and other interested parties. Information obtained from field data, discussions with the public and other sources indicate that these lands meet the criterion of 43 CFR 2410.1–3(a), which authorizes classification of lands for disposal under appropriate authority where such lands are found to be chiefly valuable for public purposes and which lands are not needed for the support of a Federal program.

The public lands proposed for classification are located within the following described area and are shown on maps on file in the Grand Junction District Office, Bureau of Land Management, Grand Junction, Colorado, and at the Land Office, Bureau of Land Management, Room 15019, Federal Building, 1961 Stout Street, Denver, Colo. 80202. For a period of 60 days from date of this publication, interested parties may submit comments to the District Manager, Bureau of Land Management, 228 Federal Office Building, Post Office Box 1509, Grand Junction, Colo. 81501:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 9 S., R. 95 W.,
Sec. 26, SW¼NW¼.
T. 10 S., R. 95 W.,
Sec. 15, SW¼SE¼;
Sec. 22, NE¼NE¼;
T. 10 S., R. 96 W.,
Sec. 21, NE¼SE¼;
Sec. 22, NW¼SW¼.

The total area involved aggregates approximately 200 acres of public land in Mesa County.

E. I. ROWLAND,
State Director.

[F.R. Doc. 70–4309; Filed, Apr. 8, 1970; 8:47 a.m.]

[C–10820]

COLORADO

Notice of Proposed Withdrawal and Reservation of Lands

APRIL 3, 1970.

The Forest Service, U.S. Department of Agriculture, has filed the above application for the withdrawal of the lands described below from all forms of appropriation under the Public Land Laws, including the General Mining Laws, but not the Mineral Leasing Laws, subject to valid existing rights.

The applicant desires the lands for transfer to the San Isabel National Forest and for use in connection with the development of the Conquistador Ski Area.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Colorado Land Office, Room 15019, Federal Building, 1961 Stout Street, Denver, Colo. 80202.

The Department's regulations (43 CFR 2311.1–3(c)) provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved are:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 22 S., R. 73 W.,
Sec. 19, lots 4, 6, 7, 8, 9, E½SW¼;
Sec. 30, lots 1, 2, S½NE¼, E½NW¼.

The above-described land aggregates 476 acres, more or less.

ANDREW J. SENTI,
Acting Manager,
Colorado Land Office.

[F.R. Doc. 70–4311; Filed, Apr. 8, 1970; 8:47 a.m.]

[Montana 12770]

MONTANA

Proposed Classification of Public Lands for Multiple Use Management

APRIL 2, 1970.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411–18), and to the regulations in 43 CFR, Parts 2410 and 2411, it is proposed to classify for multiple use management the public lands described below. Publication of this notice has the effect of segregating the described lands from appropriation only under the agricultural land laws (43 U.S.C. Parts 7 and 9, 25 U.S.C. sec. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171) and the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The public lands proposed for classification are located within the following described areas and are shown on maps on file in the Dillon District Office, Bureau of Land Management, Dillon, Mont., and in the Land Office, Bureau of Land Management, Federal Building, Billings, Mont.

PRINCIPAL MERIDIAN MONTANA

SILVER BOW COUNTY

T. 1 S., R. 6 W.,
Sec. 8.
T. 1 S., R. 8 W.,
Secs. 4 to 10, inclusive;
Secs. 17 to 20, inclusive;
Secs. 24 to 26, inclusive;
Secs. 28 to 35, inclusive.
T. 1 S., R. 9 W.,
Secs. 1 and 2;
Secs. 9 to 15, inclusive;
Secs. 22 to 28, inclusive;
Secs. 32 to 36, inclusive.
T. 1 S., R. 10 W.,
Secs. 1 to 5, inclusive;
Secs. 10 to 12, inclusive.
T. 2 S., R. 8 W.,
Secs. 1 to 11, inclusive;
Secs. 17 to 20, inclusive.
T. 2 S., R. 9 W.,
Secs. 1 and 2;
Secs. 4 and 5;
Secs. 9 and 10;
Secs. 12, 14, and 24.
T. 1 N., R. 6 W.,
Secs. 29 and 32.
T. 1 N., R. 8 W.,
Secs. 6 and 31.
T. 1 N., R. 9 W.,
Sec. 4.
T. 1 N., R. 10 W.,
Secs. 30 to 32, inclusive.
T. 1 N., R. 11 W.,
Secs. 13 to 15, inclusive;
Secs. 17 to 29, inclusive.
T. 1 N., R. 12 W.,
Secs. 2 and 3;
Secs. 10 to 13, inclusive.

DEERLODGE COUNTY

T. 1 N., R. 12 W.,
Secs. 2 and 3.
T. 1 N., R. 13 W.,
Secs. 4, 8, and 18.
T. 1 N., R. 14 W.,
Sec. 26.
T. 2 N., R. 12 W.,
Secs. 20 and 28;
Secs. 32 to 34, inclusive.
T. 2 N., R. 13 W.,
Secs. 20, 22, and 24;
Sec. 34.

The public land in the areas described aggregate approximately 48,440 acres.

3. For a period of sixty (60) days from the date of publication of this notice in the FEDERAL REGISTER, all persons who

wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the District Manager, Bureau of Land Management, Dillon, Mont. 59725.

4. A public hearing on the proposed classification will be held on June 4, 1970, at 1 p.m., at the Romney Inn, 2910 Harrison Avenue, Butte, Mont.

EUGENE H. NEWELL,
Acting State Director.

[F.R. Doc. 70-4337; Filed, Apr. 8, 1970; 8:49 a.m.]

[Serial No. N-4530]

NEVADA

Order Opening Lands to Petition-Application

MARCH 31, 1970.

1. Pursuant to the authority delegated to me by Bureau Order 701 of July 23, 1964, as amended, and the regulations in 43 CFR 2233.1-1(e)(4), it is hereby ordered as follows:

2. At 10 a.m. on April 15, 1970, the lands described in paragraph 3 shall be open to petition-application under the applicable provisions of the Act of June 1, 1938 (52 Stat. 609), as amended (68 Stat. 239; 43 U.S.C. 682a).

3. The public lands are described as follows:

MOUNT DIABLO MERIDIAN

Beginning at the east quarter corner of section 24, T. 5 S., R. 42 E.;
Thence north 82°50" east 92.4 chains to the true point of beginning; thence east 5 chains; thence north 10 chains; thence west 3 chains; thence south 16°08" west along the easterly boundary of a public airport 9.2 chains to the point of beginning.

The area described above aggregates approximately 3.75 acres.

4. The lands have been open to applications and offers under the mineral leasing laws and to location under the U.S. mining laws.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Room 3008, Federal Building, 300 Booth Street, Reno, Nev. 89502.

ROLLA E. CHANDLER,
Manager, Nevada Land Office.

[F.R. Doc. 70-4312; Filed, Apr. 8, 1970; 8:47 a.m.]

[New Mexico 435]

NEW MEXICO

Notice of Classification of Public Lands for Multiple Use Management

APRIL 3, 1970.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18) and the regulations in 43 CFR Parts 2410 and 2411, the public lands described below were classified for multiple use management (32 F.R. 2579-2586) on February 7, 1967.

2. Publication of this notice segregates the lands from all forms of appropriation including the general mining and the mineral leasing laws. The lands have high recreational or historical values and it is necessary to protect the Government's existing and proposed recreational improvements. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

3. The adverse comments which were received following publication of the notice of proposed classification (34 F.R. 5748) were withdrawn. The record showing the comments received and other information is on file and can be examined in the Las Cruces District Office, Bureau of Land Management, 1705 North Seventh Street, Las Cruces, N. Mex. 88001, and the New Mexico Land Office, Post Office and Federal Building, Federal place, Santa Fe, N. Mex. 87501. The public lands affected by this classification are located within the following described areas and are shown on maps designated 30-03-01, 30-03-02, and 30-03-03 in the Las Cruces District Office and at the New Mexico Land Office of the Bureau of Land Management.

NEW MEXICO PRINCIPAL MERIDIAN

ORGAN MOUNTAIN RECREATION AREA

T. 22 S., R. 4 E.,
Sec. 6, lots 17 and 62 to 76, inclusive;
Sec. 8, E½;
Sec. 16, lot 1 and W½NW¼;
Sec. 17, lots 1, 2, 3, 6, 7, 8, and W½SE¼;
Sec. 20, N½ and SW¼;
Sec. 31, lots 5, 6, and E½NW¼;
Secs. 32 and 33.

BAYLOR RECREATION AREA

T. 22 S., R. 3 E.,
Sec. 13, SW¼ and SW¼SE¼;
Sec. 14, lots 13, 14, 15, and 16;
Sec. 23, lot 7 and NE¼NE¼;
Sec. 24, N½ and N½SE¼.

THREE RIVERS PETROGLYPH SITE

T. 11 S., R. 9½ E.,
Sec. 17, E½SE¼;
Sec. 20, E½NE¼;
Sec. 21;
Sec. 28, N½N½.

NEEDLE'S EYE PICNIC SITE

T. 24 S., R. 3 E.,
Sec. 1;
Sec. 12, N½.

GRANITE GAP RECREATION AREA

T. 25 S., R. 21 W.,
Sec. 26, SW¼;
Sec. 27, S½;
Sec. 34, N½;
Sec. 35, NW¼.

MASSACRE PEAK PETROGLYPHS

T. 21 S., R. 8 W.,
Sec. 29, SW¼ and W½SE¼.

FORT CUMMINGS RECREATION AREA

T. 21 S., R. 3 W.,
Secs. 20, 21, and 22;
Sec. 23, E½, N½NW¼, SE¼NW¼, and SW¼;
Secs. 24, 25, and 26;
Sec. 27, E½, NW¼, and NW¼SW¼;
Sec. 28;
Sec. 29, N½ and E½SE¼.

DONA ANA RECREATION AREA

T. 21 S., R. 1 E.,
Secs. 24 and 25.
T. 21 S., R. 2 E.,
Sec. 19, lots 16 to 21, inclusive, and lots 23 to 31, inclusive;
Sec. 30;
Sec. 31, lots 9 to 16, inclusive.

The areas described above aggregate 13,582.35 acres.

4. For a period of 30 days from date of publication in the FEDERAL REGISTER, this classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR section 2411.2c. For a period of 30 days, interested parties may submit comments to the Secretary of the Interior, LLM, 721, Washington, D.C. 20240.

W. J. ANDERSON,
State Director.

[F.R. Doc. 70-4313; Filed, Apr. 8, 1970; 8:47 a.m.]

[Serial No. Utah 8151]

UTAH

Notice of Proposed Classification of Public Lands for Multiple-Use Management

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411-18), and to the regulations in Title 43 CFR, Parts 2410 and 2411, it is proposed to classify for multiple-use management the public lands within the area described below. Publication of this notice has the effect of segregating the described lands from appropriation under the agricultural lands laws (43 U.S.C., Parts 7 and 9; 25 U.S.C. sec. 334), and from sales under section 2455 of the Revised Statutes as amended (43 U.S.C. 1171). The lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws, except as noted in paragraph 3 below. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The public lands affected are those administered by the Bureau of Land Management within the following described areas in Beaver and Iron Counties:

SALT LAKE MERIDIAN

T. 26 S., R. 7 W.,
That portion of township in Beaver County west of the National Forest boundary.
T. 26 S., Rs. 8 to 20 W.,
That portion of townships in Beaver County.
T. 27 S., R. 7 W.,
That portion of township west of National Forest boundary.
T. 27 S., Rs. 8 to 18 W.,
All of townships.
T. 27 S., Rs. 19 and 20 W.,
That part within Fillmore District 3.
Tps. 28, 29, and 30 S., R. 6 W.,
That part west of the National Forest boundary.

Tps. 28, 29, and 30 S., Rs. 7 to 19 W.,
All townships and portions of townships within Fillmore District 3.
T. 31 S., Rs. 8 to 18 W.,
All portions of townships within Fillmore District 3.
T. 32 S., Rs. 10 and 11 W.,
That portion of townships within Fillmore District 3.

The area described is bounded on the north by the Beaver-Millard County line, on the west and south by the Nevada State line and the boundary between Grazing Districts 3 and 4, and on the east by the National Forest boundary. Public domain land within the area totals approximately 1,097,888 acres.

3. Publication of this notice also has the effect of segregating the lands described below from entry or location under the general mining laws, but not the mineral leasing laws:

Name of site	Description	Acres
Golden Reef Recreation Area.	T. 26 S., R. 13 W., Sec. 25, NE¼NE¼.	40.00
Frisco Peak	T. 26 S., R. 13 W., Sec. 26, W½NW¼; Sec. 27, SE¼NE¼, NE¼SE¼.	160.00
Ranch Canyon No. 1.	T. 27 S., R. 9 W., Sec. 35, SW¼SE¼.	40.00
North Creek	T. 28 S., R. 6 W., Sec. 29, lots 5, 6, and 7.	121.94
Ranch Canyon No. 2.	T. 28 S., R. 9 W., Sec. 1, SE¼NE¼, E½SE¼.	120.00
Rock Corral	T. 28 S., R. 9 W., Sec. 14, NW¼SE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼.	160.00
Charcoal Kilns	T. 28 S., R. 15 W., Sec. 10, SW¼NE¼.	40.00
Willow Springs No. 1.	T. 29 S., R. 15 W., Sec. 7, NW¼NE¼.	40.00
Charcoal Kilns	T. 29 S., R. 15 W., Sec. 9, SE¼NW¼.	40.00
Rose Canyon	T. 29 S., R. 16 W., Sec. 13, NE¼NE¼.	40.00
Willow Springs No. 2.	T. 29 S., R. 16 W., Sec. 11, NW¼NE¼.	40.00
Minersville Reservoir.	T. 30 S., R. 9 W., Sec. 1, lot 4 (NW¼NW¼); Sec. 2, that part west of Minersville Reservoir within NE¼NE¼, S½NE¼, E½SW¼, NW¼SE¼ containing approximately.	140.00
Indian Peak	T. 30 S., R. 18 W., Sec. 3, that part of NE¼SE¼ within Fillmore District.	15.00
Pinon-Juniper Study Area.	T. 30 S., R. 15 W., Sec. 7, S½SW¼; Sec. 18, W½W½; Sec. 19, NW¼NW¼. T. 30 S., R. 16 W., Sec. 13, E½E½; Sec. 24, NE¼NE¼.	480.00
Total acres		1,516.94

4. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the District Manager, Bureau of Land Management, Post Office Box 778, Fillmore, Utah 84631; or to the State Director, Bureau of Land Management, Post Office Box 11505, Salt Lake City, Utah 84111.

5. The record and maps depicting these lands are on file and may be viewed at the Bureau of Land Management's district office at Fillmore, Utah and the State Office, Federal Building, 125 South State Street, Salt Lake City, Utah.

6. A public hearing on the proposed classification will be held on April 16, 1970, at 1 p.m. in the courtroom of the Beaver County Courthouse, Beaver, Utah. At this hearing statements in support of or opposition to the proposal may be presented.

R. D. NIELSON,
State Director.

[F.R. Doc. 70-4310; Filed, Apr. 8, 1970; 8:47 a.m.]

Office of the Secretary

DARIUS N. KEATON, JR.

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of March 13, 1970.

Dated: March 24, 1970.

D. N. KEATON.

[F.R. Doc. 70-4326; Filed, Apr. 8, 1970; 8:48 a.m.]

EDGAR A. WEYMOUTH

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of March 25, 1970.

Dated: March 20, 1970.

EDGAR A. WEYMOUTH.

[F.R. Doc. 70-4327 Filed, Apr. 8, 1970; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[Case No. 336]

LUDWIG KASTNER

Order Conditionally Restoring Export Privileges

In the matter of Ludwig Kastner, Rossauer Lande 25, Vienna IX, Austria, Respondent.

By order dated December 3, 1964 (29 F.R. 17123), the above-named Ludwig Kastner, and also George Kastner were denied all U.S. export privileges for the duration of export controls. The order provided in substance that 5 years after the date thereof the respondents might apply for modification of the denial order. The said respondents have filed such applications.

The respondents' applications were referred to the Compliance Commissioner and considered by him. He recommended that the application of George Kastner be denied and such recommendation is hereby accepted and said application is denied.

With respect to Ludwig Kastner the Compliance Commissioner has reported that it appears from said respondent's representations and otherwise from information in possession of the Investigations Division, Office of Export Control, that conditional restoration of said respondent's export privileges is consistent with the purposes of the export control program. The Compliance Commissioner has recommended that an order be entered conditionally restoring export privileges to said respondent.

The undersigned has considered the record herein and concurs with the Compliance Commissioner that conditional restoration of Ludwig Kastner's export privileges is consistent with the purposes of the U.S. Export Administration Act of 1969 and regulations.

Accordingly, it is hereby ordered that the export privileges of Ludwig Kastner be and hereby are restored conditionally, and the said respondent is placed on probation for the duration of export controls. The conditions of probation are that the said respondent: (1) Shall fully comply with all of the requirements of the Export Administration Act of 1969, and all regulations, licenses, and orders issued thereunder; (2) shall on request of the Office of Export Control, or a representative of the U.S. Government acting on its behalf, promptly disclose fully the details of his participation in any and all transactions involving U.S.-origin commodities or technical data, including information as to the disposition or intended disposition of such commodities or technical data, and on such request shall also furnish all records and documents relating to such matters. Further, on such request, said respondent shall promptly disclose the names and addresses of his partners, agents, representatives, employees, and other persons associated with him in trade or commerce.

Upon a finding by the Director, Office of Export Control, or such other official as may be exercising the duties now exercised by him, that said respondent has failed to comply with any of the conditions of probation, said official, with or without prior notice to said respondent, by supplemental order, may revoke the probation of said respondent and deny to him all export privileges for such period as said official may deem appropriate. Such order shall not preclude the

Bureau of International Commerce from taking further action for any violation as may be warranted.

Dated: March 16, 1970.

This order shall become effective forthwith.

RAUER H. MEYER,
Director, Office of Export Control.

[F.R. Doc. 70-4345; Filed, Apr. 8, 1970; 8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-162; NDA No. 12-228, etc.]

CERTAIN DRUGS; EXTENSION OF TIME FOR REQUESTING HEARING ON PROPOSAL TO WITHDRAW APPROVAL OF NEW-DRUG APPLICATIONS

Drugs for Human Use; Drug Efficacy Study Implementation

A Notice of Opportunity for Hearing was published in the FEDERAL REGISTER of February 7, 1970 (35 F.R. 2734), announcing that the Commissioner of Food and Drugs proposed to issue an order under the provisions of section 505(e) of the Federal Food, Drug, and Cosmetic Act withdrawing approval of new-drug applications for combination drugs containing thiazides and potassium chloride; or thiazides, potassium chloride, and reserpine or rauwolfia serpentina. The notice allowed 30 days after its publication in the FEDERAL REGISTER for persons who would be adversely affected by an order withdrawing such approval to file a written appearance electing whether or not to avail themselves of the opportunity for a hearing.

The notice included reference to the order published in the FEDERAL REGISTER of September 19, 1969 (34 F.R. 14596), amending the procedural rules applicable to requests for hearings (21 CFR 130.12, 130.14, 146.1). On January 16, 1970, the Hon. James L. Latchum, judge of the U.S. District Court of the District of Delaware, filed an opinion that the amendments of September 19, 1969, were null and void because of the lack of advance notice of proposed rule making and opportunity for interested persons to file comments. In the FEDERAL REGISTER of February 17, 1970 (35 F.R. 3073), the Commissioner of Food and Drugs proposed said amendments, allowing 30 days for interested persons to comment. After comments have been received and reviewed a final order will be promulgated.

Therefore, the notice of opportunity for hearing published February 7, 1970, is amended by extending the time for filing a written appearance of election until 30 days after the date of publication in the FEDERAL REGISTER of a final order acting on the proposal of February 17, 1970.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-53, as amended; 21 U.S.C. 355) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: March 30, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-4305; Filed, Apr. 8, 1970; 8:47 a.m.]

FEDERAL MARITIME COMMISSION

ALASKA STEAMSHIP CO. ET AL.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreement, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as inidcated hereinafter) and the statement should indicate that this has been done.

Alaska Steamship Co., Dillingham Corp., and Foss L & T Co., Notice of Agreement Filed for Approval by:

Edward G. Lowry, III, Bogle, Gates, Dobrin, Wakefield & Long, 14th Floor Norton Building, Seattle, Wash. 98104.

Agreement No. DC-45 between Alaska Steamship Co., Dillingham Corp. (Dillingham) and Foss L & T Co. (Foss), a wholly owned subsidiary of Dillingham, provides for the sale by Alaska Steamship Co. to Foss of certain equipment employed in Alaska Steamship Co.'s Southeastern Alaska service and certain parcels of real property.

Alaska Steamship Co. also intends to transfer certain operating rights under the Interstate Commerce Commission (ICC) which it has in connection with its transportation service between Seattle, Wash., and Southeastern Alaska. If the ICC approves such transfer prior to the closing date, the Alaska Steamship Co. shall transfer such rights to Foss on the first closing date. If the ICC approves such transfer on or after such closing date, Alaska Steamship Co. shall transfer such rights to Foss on the second closing date. The agreement also provides that Alaska Steamship Co. will not compete with Foss for a period of 5 years from the first closing date.

Foss shall pay to Alaska Steamship Co. a total purchase price of $3,900,000.

The first closing date of the transactions covered by the agreement shall take place at a time and place to be determined by the parties but not later than thirty (30) days after the Federal Maritime Commission has approved this agreement pursuant to section 15, Shipping Act, 1916.

Dated: April 3, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-4349; Filed, Apr. 8, 1970; 8:50 a.m.]

ISRAEL/U.S. NORTH ATLANTIC PORTS WESTBOUND FREIGHT CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. M. Ronn, Secretary p.t., Israel/U.S. North Atlantic Ports Westbound Freight Conference, Ha'atzmauth Road 7-9, Post Office Box 1723, Haifa, Israel.

Agreement No. 8420-8, between the member lines of the Israel/U.S. North Atlantic Ports Westbound Freight Conference, amends Article 1 of the basic agreement to provide for the transportation of cargo either direct or via transshipment, in any direct or on-carrier vessel owned, controlled, chartered or operated by the member lines in the trade covered by the agreement.

Dated: April 6, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-4350; Filed, Apr. 8, 1970; 8:50 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

REGIONAL ADMINISTRATORS AND DEPUTY REGIONAL ADMINISTRATORS

Redelegations of Authority With Respect to Renewal Assistance Programs

The redelegations of authority to Regional Administrators and Deputy Regional Administrators with respect to renewal assistance programs published at 31 F.R. 8966, June 29, 1966, as amended at 32 F.R. 11391, August 5, 1967; 34 F.R. 20225, December 24, 1969; and 35 F.R. 1023, Jan. 24, 1970, are further amended under section A, paragraph 1, by revising subparagraph i to read as follows:

i. Suspend or teminate Federal loan or grant assistance, except the cancellation of reservations of capital grant funds in connection with the termination of Federal assistance under a contract for an advance and except the termination of Federal assistance under the demolition grant, code enforcement grant, interim assistance for blighted areas, and certified areas programs under title I of the Housing Act of 1949, as amended (42 U.S.C. 1450-1469).

(Secretary's delegations of authority published at 31 F.R. 8964, June 29, 1966, as amended at 32 F.R. 624, Jan. 19, 1967, 32 F.R. 11390, Aug. 5, 1967, and 33 F.R. 10161, July 16, 1968)

Effective date. This amendment of redelegations of authority shall be effective as of April 1, 1970.

LAWRENCE M. COX,
Assistant Secretary for Renewal and Housing Management.

[F.R. Doc. 70-4346 Filed, Apr. 8, 1970; 8:50 a.m.]

DEPARTMENT OF TRANSPORTATION

Hazardous Materials Regulations Board

I. R. WOLFE AND SONS, INC., ET AL.

Special Permits Issued

APRIL 6, 1970.

Pursuant to Docket No. HM-1, Rule-making Procedures of the Hazardous Materials Regulations Board, issued May 22, 1968 (33 F.R. 8277), 49 CFR 170, following is a list of new DOT Special Permits upon which Board action was completed during March 1970:

Special permit No.	Issued to—Subject	Mode or modes of transportation
6179	I.R. Wolfe & Sons, Incorporated for the shipment of compressed air, argon, oxygen, nitrogen, helium, hydrogen, nitrous oxide, and mixtures thereof in DOT-3A and 3AA cylinders having a 10-year hydrostatic retest period.	Highway and rail.
6181	Keen Compressed Gas Company, Incorporated, for the shipment of oxygen, hydrogen, nitrogen, argon, and mixtures thereof in DOT-3A and 3AA cylinders having a 10-year hydrostatic retest period.	Highway and rail.
6185	Shippers upon specific registration with this Board, for the shipment of not to exceed 95% concentration sulfuric acid in a certain type DOT Specification 6D/2U composite packaging of not over 15 gallon capacity.	Highway and rail.
6186	Bernzomatic Corporation for the shipment of dichlorodifluoromethane in a nonrefillable seamless 350-gram water capacity aluminum pressure vessel.	Highway and rail.
6187	Burdett Oxygen Company of Cleveland, Incorporated, for the shipment of compressed air, argon, helium, hydrogen, krypton, neon, nitrogen, nitrous oxide, oxygen, xenon, and mixtures thereof in DOT-3A and 3AA cylinders having a 10-year hydrostatic retest period.	Highway and rail.
6188	Shippers upon specific registration with this Board, for the shipment of fissile radioactive materials in the Model No. 25.0 Spare Module Shipping and Storage Container.	Water, cargo-only aircraft, highway, and rail.
6190	Shippers upon specific registration with this Board, for the shipment of fissile radioactive materials in the Numec Model No. 965A1 shipping container.	Highway and rail.
6191	Shippers upon specific registration with this Board, for the shipment of formic acid or formic acid solutions in a DOT Specification 33A polystyrene case having one inside glass bottle of not over 5-pint capacity.	Highway and rail.
6192	Shippers upon specific registration with this Board, for the shipment of stabilized sulfur trioxide in a proposed DOT Specification 111A60W2 tank car tank.	Rail.
6193	Gulf Welding Supply Company for the shipment of compressed air, argon, hydrogen, nitrogen, and oxygen in DOT-3A and 3AA cylinders having a 10-year hydrostatic retest period.	Highway and rail.
6194	Welding Equipment Company for the shipment of oxygen or nitrogen in DOT-3A and 3AA cylinders having a 10-year hydrostatic retest period.	Highway and rail.
6195	Shippers upon specific registration with this Board, for the shipment of carbon bisulfide in a DOT Specification 12A fiberboard box with inside glass bottles not over 1-gallon capacity each.	Highway.
6196	Shippers upon specific registration with this Board, for the shipment of Type B quantities of non-fissile radioactive materials, n.o.s., or special form, in the Argonne Waste Storage Bin.	Highway and rail.
6199	Shippers upon specific registration with this Board, for the shipment of oxygen in a small 1000 psig service pressure non-refillable steel cylinder.	Cargo-only aircraft, highway, and rail.
6201	Kilgore Corporation for the shipment of class B explosives, special fireworks, in a non-DOT specification 24/22 gauge steel drum.	Highway.
6202	Industrial Welding Equipment Company, for the shipment of compressed air, nitrogen, oxygen, argon, helium, hydrogen, mixtures thereof, and oxygen—10% carbon dioxide mixtures in DOT-3A and 3AA cylinders having a 10-year hydrostatic retest period.	Highway and rail.
6203	U.S. Atomic Energy Commission for one shipment of metallic sodium in a plant equipment-type tank.	Highway.
6204	Shippers upon specific registration with this Board, for the shipment of paints and related materials having a flash point above 20° F., in a 345-gallon nominal water capacity steel portable tank.	Highway.
6205	Shippers upon specific registration with this Board, for the shipment of liquefied natural gas in a 11,725-gallon nominal water capacity steel jacketed vacuum insulated aluminum cargo tank.	Highway.
6206	Shippers upon specific registration with this Board, for the shipment of fissile radioactive materials in the Babcock and Wilcox Company Model No. B shipping container.	Highway.
6209	University of Kansas for one shipment of 1000 curies of cobalt-60 in a teletherapy source head.	Highway.
6211	Shippers upon specific registration with this Board, for the shipment of vanadium oxytrichloride in a DOT Specification MC 310, MC 311, or MC 312 cargo tank.	Highway.
6212	Shippers upon specific registration with this Board, for the shipment of sodium chlorite solutions in a DOT Specification MC 311 or MC 312 fabricated from Type 316 stainless steel.	Highway.

WILLIAM C. JENNINGS,
Chairman, Hazardous Materials Regulations Board.

[F.R. Doc. 70-4360; Filed, Apr. 8, 1970; 8:51 a.m.]

SMALL BUSINESS ADMINISTRATION

GEORGIA SOUTHERN BUSINESS EQUITIES, INC.

Notice of License Surrender

Notice is hereby given that Georgia Southern Business Equities, Inc. (GSBE), Shurlington Plaza Shopping Center, Macon, Ga. 31201, has surrendered its license to operate as a small business investment company pursuant to § 107.105 of the regulations governing Small Business Investment Companies (33 F.R. 326, 13 CFR Part 107).

GSBE was licensed as a small business investment company on December 23, 1960, to operate solely under the Small Business Investment Act of 1958 (the

Act), as amended (15 U.S.C., 661 et seq.), and the regulations promulgated thereunder.

Under the authority vested by the Act, and pursuant to the cited regulations, the surrender of the license was accepted and all rights privileges, and franchises derived therefrom were canceled and terminated as of December 5, 1969.

For Small Business Administration.

Dated: March 31, 1970.

A. H. SINGER,
Associate Administrator for Investment.

[F.R. Doc. 70-4328; Filed, Apr. 8, 1970; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 486]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

APRIL 6, 1970.

Pursuant to §§ 1.227(b)(3) and 21.26(b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business 1 business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations and other requirements.

[2] The above alternative cutoff rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio, and Local Television Transmission Services (Part 21 of the rules).

APPENDIX

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

File No., applicant, call sign, and nature of application

4887-C2-R-70—The Chesapeake & Potomac Telephone Co. of Virginia (KWA641), Renewal of developmental license expiring May 14, 1970. Term: May 14, 1970 to May 14, 1971. Location: Temporary locations within the State of Virginia.

5599-C2-P-70—The Bell Telephone Co. of Pennsylvania (KGC226), C.P. to change antenna system; change transmitter site at location No. 1 from 723 Linden Street, to 110 North Hall Street, Allentown, Pa. Authorized one-way-signaling frequency 35.34 MHz.

5600-C2-P-70—Electrocom Corp. (KCI297), C.P. to add base station at a new site identified as location No. 2; 111 Perkins Street, Boston, Mass., to operate on 454.20 MHz.

5601-C2-P-(2)-70—RAM Broadcasting of Florida, Inc. (New), C.P. for a new air-ground station to be located at 101 North Tampa Street, Tampa, Fla. Frequencies: 454.675 MHz (Signaling), 454.750 and 454.975 MHz (Base).

5603-C2-P-(2)-70—Georgia Mobile Telephone Co. (New), C.P. for a new air-ground station to be located at Southland Moving & Storage Building, 5126 Cypress Street, Tampa, Fla. Frequencies: 454.675 MHz (Signaling), 454.750 and 454.975 MHz (Base).

5604-C2-P-(2)-70—Oregon Mobile Telephone Co. (New), C.P. for a new air-ground station to be located at 814 Fifth Street South, Great Falls, Mont. Frequencies: 454.675 MHz (Signaling), 454.900 and 454.975 MHz (Base).

5605-C2-P-70—Oregon Mobile Telephone Co. (New), C.P. for a new air-ground station to be located at Shattuck Butte near Idaho Falls, Idaho. Frequencies: 454.675 MHz (Signaling), 454.875 MHz (Base).

5606-C2-P-70—Oregon Mobile Telephone Co. (New), C.P. for a new air-ground station to be located at 7 miles southeast of Glendive, Mont. Frequencies: 454.675 MHz (Signaling), and 454.850 MHz (Base).

5607-C2-P-70—Oregon Mobile Telephone Co. (New), Same as above, except: Location, north edge of Logan Airport, Billings, Mont. Frequencies: 454.675 MHz (Signaling), and 454.825 MHz (Base).

5608-C2-P-70—Oregon Mobile Telephone Co. (New), Same as above, except: Location, Casper Mountain, 6 miles southeast of Casper, Wyo. Frequencies: 454.675 MHz (Signaling), and 454.700 MHz (Base).

5609-C2-P-(2)-70—Missouri Mobile Telephone Co. (New), C.P. for a new air-ground station to be located at Chase Park Plaza Hotel, 220 North Kings Highway Boulevard, St. Louis, Mo. Frequencies: 454.675 MHz (Signaling), 454.800 and 454.875 MHz (Base).

5610-C2-P-(2)-70—Missouri Mobile Telephone Co. (New), Same as above, except: Location, Commerce Bank Building, Ninth and Main Streets, Kansas City, Mo. Frequencies: 454.675 MHz (Signaling), 454.775 and 454.900 MHz (Base).

5611-C2-P-(2)-70—Texas Mobile Telephone Co. (New), C.P. for a new air-ground station to be located at 3805 Hessmer Avenue, Matairie, La. (New Orleans). Frequencies: 454.675 MHz (Signaling), 454.850 and 454.925 MHz (Base).

5612-C2-P-70—Texas Mobile Telephone Co. (New), Same as above, except: Location, Sandia Peak, 1.4 miles east-northeast of Albuquerque, N. Mex. Frequencies: 454.675 MHz (Signaling), 454.750 MHz (Base).

5613-C2-P-70—Texas Mobile Telephone Co. (New), Same as above, except: Location, 2 blocks west of 81 Bypass on West North Street, Salina, Kans. Frequencies: 454.675 MHz (Signaling), and 454.950 MHz (Base).

5614-C2-P-70—Texas Mobile Telephone Co. (New), C.P. for a new air-ground station to be located at East Richey Street, Artesia, N. Mex. Frequencies: 454.675 MHz (Signaling), and 454.950 MHz (Base).

5615-C2-P-70—South Carolina Mobile Telephone Co. (New), C.P. for a new air-ground station to be located at Sikes Radio Co., 4112 Dorchester Road, Charleston, S.C. Frequencies: 454.675 MHz (Signaling), and 454.800 MHz (Base).

5616-C2-P-70—Nebraska Mobile Telephone Co. (New), C.P. for a new air-ground station to be located at 2 miles southwest of Freemont, North Bend, Neb. Frequencies: 454-675 MHz (Signaling), and 454.700 MHz (Base).

5617-C2-P-(2)-70—Utah Mobile Telephone Co. (New), C.P. for a new air-ground station to be located at 1518 Washington Boulevard, Ogden, Utah. Frequencies: 454.675 MHz (Signaling), 454.850 and 454.925 MHz (Base).

5618-C2-P-(2)-70—Utah Mobile Telephone Co. (New), Same as above, except: Location, Cove TV Relay Site near Monroe, Richfield, Utah. Frequencies: 454.675 MHz (Signaling), 454.825 and 454.950 MHz (Base).

5619-C2-P-(2)-70—California Mobile Telephone Co. (New), C.P. for a new air-ground station to be located at Bald Mountain, 1.25 miles south of Meadow Lakes, Calif. Frequencies: 454.675 MHz (Signaling), 454.850 and 454.925 MHz (Base). (Fresno).

5620-C2-P-70—California Mobile Telephone Co. (New), Same as above, except: Location, Monument Peak, east of San Diego, Calif. Frequencies: 454.675 MHz (Signaling), and 454.825 MHz (Base).

5622-C2-P-(3)-70—RAM Broadcasting of Colorado, Inc. (New), C.P. for a new 2-way station to be located at Western Fidelity Building, 17th and California Streets, Denver, Colo. Base frequencies: 454.250, 454.275, and 454.300 MHz.

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE—continued

5645-C2-P-(3)-70—Chalfont Communications (New), C.P. for a new air-ground station. Location No. 1: Monument Peak, 1 mile north of Mount Laguna, Calif. Frequencies: 454.675 MHz (Signaling), 454.825 MHz (Base), and 75.54 MHz (Repeater). Location No. 2: 1890 Euclid Avenue, El Centro, Calif. Frequency: 72.98 MHz (Repeater).

5646-C2-P-70—Metro-Radiophone of Janesville (New), C.P. for a new 2-way station to be located at No. 5 South High Street, Janesville, Wis., to operate on frequency 152.12 MHz and 10 dispatch stations pursuant to section 21.519(a) of the rules.

5647-C2-AP-(2)-70—Air Capitol Radiofone, Consent to assignment of license from Francis R. Aksamit, doing business as Air Capitol Radiofone, Assignor, to: General Communications Systems, Inc., Assignee. Stations: KLF625, Wichita, Kans.; KQZ793, Wichita, Kans.

5648-C2-TC-70—Delaware Telephone Answering Service, Inc., Consent to transfer of control from Lee D. Wilson, Transferor, to: David Etchison and Jan Etchison, Transferees. Station: KJU800, Muncie, Ind.

5649-C2-P-(5)-70—General Communications Service, Inc. (KOA265), C.P. to change the antenna system at location No. 3: 7.5 miles south of Phoenix, Ariz., operating on base frequency 454.35 MHz and add four additional base channels on 454.025, 454.075, 454.125, and 454.175 MHz.

5665-C2-P/ML-70—Pass Word, Inc. (KMM697), C.P. and modification of license to reinstate expired C.P. to change the antenna system operating on frequency 152.18 MHz at location No. 2: Old National Bank Building, West Riverside and North Stevens, Spokane, Wash.

5700-C2-P-70—Seattle Radiotelephone Service (KLF604), C.P. to relocate the base facilities operating on frequency 454.00 MHz, to 313 West 76th Street, Everett, Wash.

5701-C2-P-70—ComEx, Inc. (KCC797), C.P. for an additional base channel to operate on frequency 454.100 MHz at a new site described as location No. 2: Mount Agamenticus, Maine.

5702-C2-P-(3)70—Telanswer Radiophone Service (KOA739), C.P. to relocate the base facilities operating on frequency 152.03 MHz, to Atop Shafer Butte, Idaho; add repeater facilities on 459.10 MHz same location and add control facilities to operate on 454.10 MHz at a new site described as location No. 2: 1310 State Street, Boise, Idaho.

RURAL RADIO SERVICE

5684-C1-P-70—The Mountain States Telephone & Telegraph Co. (KPY60), C.P. to replace transmitter operating on frequency 459.40 MHz toward Casper, Wyo., Station KSV88. Subscriber and location: Irvine Ranch, 3 miles north of Powder River, Wyo.

POINT-TO-POINT MICROWAVE RADIO SERVICE (TELEPHONE CARRIER)

The Western Union Telegraph Co. The following 11 applications for C.P.'s propose to provide point-to-point microwave service between Cincinnati, Ohio, and Atlanta, Ga., by constructing new facilities between Wheatley, Ky., and Atlanta, Ga., and adding digital circuits to its existing Cincinnati-Wheatley route. A hybrid digital/analog radio transmission system will be used.

5623-C1-P-70—The Western Union Telegraph Co. (KQG35), Add frequencies 6004.5 and 6123.1 MHz toward Belleview, Ky. Station location: Carew Tower, Fifth and Vine Streets, Cincinnati, Ohio.

5624-C1-P-70—The Western Union Telegraph Co. (KJJ52), Add frequencies 6256.4 and 6375.1 MHz toward Cincinnati, Ohio, and 6197.2 and 6315.8 MHz toward Wheatley, Ky. Station location: Belleview, 2.5 miles northeast of Grant, Ky.

5625-C1-P-70—The Western Union Telegraph Co. (KJJ24), Add frequencies 5974.9 and 6093.5 MHz toward Belleview, Ky., and 6034.2 and 6152.8 MHz, toward Head of Cedar, Ky. Station location: Wheatley, 1.5 miles west of New Liberty, Ky.

5626-C1-P-70—The Western Union Telegraph Co. (New), C.P. for a new station to be located at Head of Cedar, 0.8 mile northeast of Skinnersburg, Ky. Frequencies: 6256.5, 6375.1 MHz toward Wheatley, Ky., 6286.2 and 6404.8 MHz toward Blue Grass, Ky.

5627-C1-P-70—The Western Union Telegraph Co. (New), C.P. for a new station to be located at Blue Grass, 1.4 miles east of Columbus, Ky. Frequencies: 6004.5 and 6123.1 MHz toward Head of Cedar, Ky., and 6034.2 and 6152.8 MHz toward Morrill, Ky.

POINT-TO-POINT MICROWAVE RADIO SERVICE (TELEPHONE CARRIER)—continued

5628-C1-P-70—The Western Union Telegraph Co. (New), C.P. for a new station to be located 1.3 miles southeast of Morrill, Ky. Frequencies: 6256.5 and 6375.1 MHz toward Blue Grass, Ky., and 6286.2 and 6404.8 MHz toward Collins Fork, Ky.

5629-C1-P-70—The Western Union Telegraph Co. (New), C.P. for a new station to be located at Collins Fork, 2.3 miles southeast of Bush, Ky. Frequencies: 6004.5 and 6123.1 MHz toward Morrill, Ky., and 5974.9 and 6093.5 MHz toward Walnut Mountain, Tenn.

5630-C1-P-70—The Western Union Telegraph Co. (New), C.P. for a new station to be located at Walnut Mountain, 3.1 miles northwest of Ivydell, Tenn. Frequencies: 6256.5 and 6375.1 MHz toward Collins Fork, Ky., and 6256.5 and 6375.1 MHz toward Sassafras, Tenn.

5631-C1-P-70—The Western Union Telegraph Co. (New), C.P. for a new station to be located at Sassafras, 14.8 miles east of Tellico Plains, Tenn. Frequencies: 6034.2 and 6152.8 MHz toward Walnut Mountain, Tenn., and 5945.2 and 6063.8 MHz toward High House, Ga.

5632-C1-P-70—The Western Union Telegraph Co. (New), C.P. for a new station to be located at High House, 3.1 miles south of Newport, Ga. Frequencies: 6226.9 and 6345.5 MHz toward Sassafras, Tenn., and 6197.2 and 6315.8 MHz toward Atlanta, Ga.

5633-C1-P-70—The Western Union Telegraph Co. (New), C.P. for a new station to be located at Bank of Georgia Building, Peach Tree Street and Walton Street, Atlanta, Ga. Frequencies: 5974.9 and 6093.5 MHz toward High House, Ga.

5650-C1-P-70—South Central Bell Telephone Co. (KIY27), C.P. to add frequency 3970 MHz toward Princeton, Ky. Station location: 305 South Main Street, Madisonville, Ky.

5651-C1-P-70—South Central Bell Telephone Co. (KIY28), C.P. to add frequencies 4010, 4090, and 4170 MHz toward Madisonville, Ky., and 4010 MHz toward Grand Rivers, Ky. Station location: Approximately 5.8 miles east of Princeton, Ky.

5652-C1-P-70—South Central Bell Telephone Co. (KIY29), C.P. to add frequencies 3970, 4050 and 4130 MHz toward Princeton, Ky., and 4050 MHz toward Paducah, Ky. Station location: 1.9 miles south-southeast of Grand Rivers, Ky.

5653-C1-P-70—South Central Bell Telephone Co. (KIY30), C.P. to add frequencies 4010, 4090, and 4170 MHz toward Grand Rivers, Ky. Station location: 810 Kentucky Avenue, Paducah, Ky.

5687-C1-P-70—The Pacific Telephone & Telegraph Co. (KMQ34), C.P. to add frequencies 6271.4 and 11,545 MHz toward Ranger, Calif. Station location: 455 Second Street, San Bernardino, Calif.

5688-C1-P-70—The Pacific Telephone & Telegraph Co. (KNL59), C.P. to add frequencies 6019.3 and 11,135 MHz toward San Bernardino, Calif., and 10,875 and 11,115 MHz toward White Water, Calif. Station location: Ranger, 6 miles south-southeast of Banning, Calif.

5689-C1-P-70—The Pacific Telephone & Telegraph Co. (KYO59), C.P. to add frequencies 11,325 and 11,565 MHz toward Ranger, Calif., and 11,365 and 11,605 MHz toward Palm Springs, Calif. Station location: 2.2 miles north-northwest of White Water, Calif.

5690-C1-P-70—The Pacific Telephone & Telegraph Co. (KYO60), C.P. to add frequencies 10,915 and 11,155 MHz toward White Water, Calif. Station location: 295 North Sunrise Way, Palm Springs, Calif.

5691-C1-P/ML-70—Southwestern Bell Telephone Co. (KAC96), C.P. to add frequency 6049 MHz toward Independence, Mo. Station location: 1425 Oak Street, Kansas City, Mo.

5692-C1-P-70—South Central Bell Telephone Co. (KYC46), C.P. to add frequencies 10,795 and 11,035 MHz toward Lexington, Ky. Station location: Approximately 0.4 mile north of Centerville, Ky.

5725-C1-P/L-70—North State Telephone Co., Inc. (New), C.P. and license for a new station to be located in any temporary-fixed location within territory of grantee. Frequencies: 2110–2130 MHz and 2160–2180 MHz.

Major Amendment

1474-C1-P-70—Northwestern Bell Telephone Co. (KBD58), Add frequencies 3750, 3830, 4070, 6315.9, and 11.405 MHz, oriented toward new point of communications Pumpkin Center, located 7.1 miles southwest of Hartford, S. Dak. These added facilities will replace those of station KAM97 currently licensed to American Telephone & Telegraph Co. at the same location. All other particulars the same as reported in public notice, Report No. 459, dated Sept. 29, 1969.

POINT-TO-POINT MICROWAVE RADIO SERVICE (TELEPHONE CARRIER)—continued

5703-C1-P-70—Mitran, Inc. (New), Site 1: C.P. for a new fixed station at the Foshay Tower Building, Minneapolis, Minn., at latitude 44°58'28" N., longitude 93°16'17" W. Frequencies 6049.0 and 6167.6 MHz on azimuth 143°48'.

5704-C1-P-70—Mitran, Inc. (New), Site 2: C.P. for a new fixed station 1.8 miles northeast of New Trier, Minn., at latitude 44°37'22" N., longitude 92°54'42" W. Frequencies 6212.0 and 6330.7 MHz on azimuth 324°04', and frequencies 6212.0 and 6330.7 MHz on azimuth 151°40'.

5705-C1-P-70—Mitran, Inc. (New), Site 3: C.P. for a new fixed station 5.7 miles northwest of Zumbrota, Minn., at latitude 44°22'06" N., longitude 92°43'14" W. Frequencies 6019.3 and 6137.9 MHz on azimuth 331°48', and frequencies 5960.0 and 6078.6 MHz on azimuth 139°17'.

5706-C1-P-70—Mitran, Inc. (New), Site 4: C.P. for a new fixed station 3.3 miles southwest of Viola, Minn., at latitude 44°01'44" N., longitude 92°18'59" W. Frequencies 6182.4 and 6301.0 MHz on azimuth 319°33' and frequencies 11,225.0 and 11,465.0 MHz on azimuth 265°33', and frequencies 6271.4 and 6390.0 MHz on azimuth 92°55'.

5707-C1-P-70—Mitran, Inc. (New), Site 5: C.P. for a new fixed station at the Sheraton Hotel, Third and Broadway, Rochester, Minn., at latitude 44°01'14" N., longitude 92°27'47" W. Frequencies 10,815.0 and 11,055.0 MHz on azimuth 85°27'.

5708-C1-P-70—Mitran, Inc. (New), Site 6: C.P. for a new fixed station 3.4 miles southwest of Winona, Minn., at latitude 44°00'14" N., longitude 91°41'01" W. Frequencies 6019.3 and 6137.9 MHz on azimuth 273°21', and frequencies 5960.0 and 6078.6 MHz on azimuth 130°45'.

5709-C1-P-70—Mitran, Inc. (New), Site 7: C.P. for a new fixed station at the WXOW-TV tower, County Highway 25 and Tchumper Ridge Road, La Crescent, Minn., at latitude 43°48'23" N., longitude 91°22'04" W. Frequencies 6212.0 and 6330.7 MHz on azimuth 310°58', and frequencies 11,225.0 and 11,465.0 MHz on azimuth 85°59', and frequencies 6212.0 and 6330.7 MHz on azimuth 101°19'.

5710-C1-P-70—Mitran, Inc. (New), Site 8: C.P. for a new fixed station at the Lynn Tower Building, 318 Main Street, La Crosse, Wis., at latitude 43°48'44" N., longitude 91°15'07" W. Frequencies 10,815.0 and 11,055.0 MHz on azimuth 266°04'.

5711-C1-P-70—Mitran, Inc. (New), Site 9: C.P. for a new fixed station 3.8 miles west-southwest of Cashton, Wis., at latitude 43°43'53" N., longitude 90°51'31" W. Frequencies 5960.0 and 6049.0 MHz on azimuth 281°40', and frequencies 5960.0 and 6049.0 MHz on azimuth 108°01'.

5712-C1-P-70—Mitran, Inc. (New), Site 10: C.P. for a new fixed station 3.4 miles south of Hillsboro, Wis., at latitude 43°36'13" N., longitude 90°19'23" W. Frequencies 6212.0 and 6330.7 MHz on azimuth 288°23', and frequencies 6182.4 and 6301.0 MHz on azimuth 121°59'.

5713-C1-P-70—Mitran, Inc. (New), Site 11: C.P. for a new fixed station 4.7 miles south of North Freedom, Wis., at latitude 43°23'31" N., longitude 89°51'37" W. Frequencies 5960.0 and 6078.6 MHz on azimuth 302°18', and frequencies 5960.0 and 6078.6 MHz on azimuth 159°23'.

5714-C1-P-70—Mitran, Inc. (New), Site 12: C.P. for a new fixed station 4.2 miles southeast of Mount Horeb, Wis., at latitude 42°59'19" N., longitude 89°39'13" W. Frequencies 6271.4 and 6390.0 MHz on azimuth 339°31', and frequencies 11,225.0 and 11,465.0 MHz on azimuth 63°31', and frequencies 6271.4 and 6390.0 MHz on azimuth 123°44'.

5715-C1-P-70—Mitran, Inc. (New), Site 13: C.P. for a new fixed station at the WKOW-TV tower, 5727 Tokay Boulevard, Madison, Wis., at latitude 43°03'09" N., longitude 89°28'42" W. Frequencies 10,815.0 and 11,055.0 MHz on azimuth 243°38'.

5716-C1-P-70—Mitran, Inc. (New), Site 14: C.P. for a new fixed station 2.5 miles west of Janesville, Wis., at latitude 42°41'58" N., longitude 89°04'10" W. Frequencies 5960.0 and 6049.0 MHz on azimuth 304°08', and frequencies 11,095.0 and 10,855.0 MHz on azimuth 163°30', and frequencies 5960.0 and 6078.6 MHz on azimuth 89°14'.

5717-C1-P-70—Mitran, Inc. (New), Site 15: C.P. for a new fixed station 2.5 miles southeast of South Beloit, Ill., at latitude 42°28'23" N., longitude 88°58'44" W. Frequencies 11,505.0 and 11,265.0 MHz on azimuth 343°34', and frequencies 11,225.0 and 11,465.0 MHz on azimuth 217°33'.

5718-C1-P-70—Mitran, Inc. (New), Site 16: C.P. for a new fixed station at the WTVO(TV) tower, Meridian Road, Rockford, Ill., at latitude 42°17'14" N., longitude 89°10'16" W. Frequencies 10,815.0 and 11,055.0 MHz on azimuth 37°25'.

5719-C1-P-70—Mitran, Inc. (New), Site 17: C.P. for a new fixed station 5.6 miles northeast of Elkhorn, Wis., at latitude 42°42'14" N., longitude 88°26'24" W. Frequencies 6271.4 and 6390.0 MHz on azimuth 269°40' and Frequencies 6271.4 and 6390.0 MHz on azimuth 48°44'.

5720-C1-P-70—Mitran, Inc. (New), Site 18: C.P. for a new fixed station at the WVTV(TV) tower on the Schroeder Hotel, Milwaukee, Wis., at latitude 43°02'20" N., longtitude 87°55'04" W. Frequencies 6019.3 and 6137.9 MHz on azimuth 229°05', and frequencies 6049.0 and 6167.6 MHz on azimuth 162°18'.

5721-C1-P-70—Mitran, Inc. (New), Site 19: C.P. for a new fixed station at the Racine Motor Inn, 535 Main Street, Racine, Wis., at latitude 42°43'32" N., longitude 87°46'56" W. Frequencies 6271.4 and 6390.0 MHz on azimuth 342°24', and frequencies 6271.4 and 6390.0 MHz on azimuth 191°32'.

5722-C1-P-70—Mitran, Inc. (New), Site 20: C.P. for a new fixed station 0.2 mile west of Waukegan, Ill., at latitude 42°21'26" N., longitude 87°53'01" W. Frequencies 6019.3 and 6137.9 MHz on azimuth 11°28', and frequencies 6019.3 and 6137.9 MHz on azimuth 168°18'.

5723-C1-P-70—Mitran, Inc. (New), Site 21: C.P. for a new fixed station at the Clifton Building Corp. Building, 2550 Golf Road, Glenview, Ill., at latitude 42°03'26" N., longitude 87°48'01" W. Frequencies 6182.4 and 6360.3 MHz on azimuth 348°22', and frequencies 11,225.0 and 11,465.0 MHz on azimuth 144°55'.

5724-C1-P-70—Mitran, Inc. (New), Site 22: C.P. for a new fixed station at the La Salle Building, 135 La Salle Street South, Chicago, Ill., at latitude 41°52'44" N., longitude 87°37'58" W. Frequencies 10,815.0 and 11,055.0 MHz on azimuth 325°02'.

[F.R. Doc. 70-4348; Filed, Apr. 8, 1970; 8:50 a.m.]

FEDERAL HOME LOAN BANK BOARD

[H.C. No. 65]

USLIFE HOLDING CORP.

Notice of Receipt of Application for Approval of Acquisition of Control of Sterling Savings and Loan Association

APRIL 6, 1970.

Notice is hereby given that the Federal Savings and Loan Insurance Corp. has received an application from the USLIFE Holding Corp., New York, N.Y., for approval of acquisition of control of the Sterling Savings and Loan Association, Riverside, Calif., an insured institution, under the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730a(e)), and § 584.4 of the regulations for savings and loan holding companies, said acquisition to be effected by an exchange of stock of USLIFE Holding Corp. for stock of Sterling Savings and Loan Association. Comments on the proposed acquisition should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, within 30 days of the date this notice appears in the FEDERAL REGISTER.

[SEAL] GRENVILLE L. MILLARD, JR.,
Assistant Secretary,
Federal Home Loan Bank Board.

[F.R. Doc. 70-4357; Filed, Apr. 8, 1970; 8:51 a.m.]

FEDERAL POWER COMMISSION

[Docket Nos. RI70-1431, etc.]

CONTINENTAL OIL CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

MARCH 31, 1970.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

[1] Does not consolidate for hearing or dispose of the several matters herein.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date suspended until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before May 15, 1970.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI70-1431	Continental Oil Co., Post Office Box 2197, Houston, Tex. 77001.	264	12	Florida Gas Transmission Co. (South McAllen and Cortez Fields, Star and Hidalgo Counties, Tex.) (RR. District No. 4).	$2,230	3-4-70	[2] 4-2-70	9-2-70	17.06562	[1] [4] 18.0	RI62-513.
RI70-1432	B & D Corp., 440 Petroleum Bldg., Jackson, Miss. 39201.	1	[1] 1	United Gas Pipe Line Co. (Gwinville Field, Jefferson Davis County, Miss.).	.....	3-4-70	[2] 4-4-70	Accepted	.....	.....	
		1	2		129,600	3-4-70	[2] 4-4-70	9-4-70	17.0	[1] 20.0	
RI70-1433	Mobil Oil Corp. (Operator), Post Office Box 1774, Houston, Tex. 77001.	178	6	Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Seeligson Field, Jim Wells County, Tex.) (RR. District No. 4).	45,777	3-5-70	[1] 4-5-70	9-5-70	15.6585	[1] 16.6623	RI70-284.
	do	296	6	do	237	3-5-70	[1] 4-5-70	9-5-70	15.6585	[1] 16.6623	RI69-8.
	do	319	10	do	2,173	3-5-70	[1] 4-5-70	9-5-70	15.6585	[1] 16.6623	RI67-272.
RI70-1434	Graham-Michaelis Drilling Co. (Operator) et al., 211 North Broadway, Wichita, Kans. 67202.	54	5	Colorado Interstate Gas Co. (Greenwood Field, Morton County, Kans.).	1,066	3-3-70	[2] 4-3-70	9-3-70	[10] 17.0	[1] [10] 18.0	RI65-523.
RI70-1435	Pan American Petroleum Corp. (Operator) et al., Post Office Box 1410, Fort Worth, Tex. 76101.	330	[11] 42	Michigan Wisconsin Pipe Line Co. (Woodward Gas Area, Major County, Okla.) (Oklahoma "Other" Area).	40,640	3-3-70	[1] 4-3-70	9-3-70	[11] [14] 16.0	[1] [13] [14] 20.51556	
RI70-1436	Phillips Petroleum Co., Bartlesville, Okla. 73003.	292	6	Natural Gas Pipeline Co. of America (Camrick Field, Beaver County, Okla.) (Panhandle Area).	376	3-2-70	[2] 4-2-70	9-2-70	[10] 17.0	[1] [10] [13] 18.5	RI61-456.
	do	307	7	Natural Gas Pipeline Co. of America (Camrick Field, Texas County, Okla.) (Panhandle Area).	186	3-2-70	[2] 4-2-70	9-2-70	[10] 17.0	[1] [10] [13] 18.5	RI61-456.
RI70-1437	Standard Oil Co. of Texas, a division of Chevron Oil Co.	45	2	Michigan Wisconsin Pipe Line Co. (North Thorndike Field, Gray and Roberts Counties, Tex.) (RR. District No. 10).	28,266	2-24-70	[1] 4-1-70	9-1-70	[11] 17.06375	[1] [11] 21.8820	RI70-684.
RI70-1438	Pan American Petroleum Corp.	398	5	Lone Star Gas Co. (Southeast Durant Field, Bryan County, Okla.) (Oklahoma "Other" Area).	30	3-2-70	[1] 4-2-70	9-2-70	18.0	[1] 19.01556	RI69-349.
	Pan American Petroleum Corp., Post Office Box 591, Tulsa, Okla. 74102.	436	[11] 3	Natural Gas Pipeline Co. of America (Putnam Field, Dewey County, Okla.) (Oklahoma "Other" Area).	121	3-5-70	[1] 4-5-70	9-5-70	[10] 15.0	[1] [10] [17] 17.01556	
	do	492	2	Michigan Wisconsin Pipe Line Co. (North Thorndike Area, Wheeler County, Tex.) (RR. District No. 10).	7,328	3-2-70	[2] 4-2-70	9-2-70	[10] 18.77	[1] [10] 20.077763	RI70-667.
RI70-1439	Gulf Oil Corp. (Operator) et al., Post Office Box 1589, Tulsa, Okla. 74102.	415	1	Kansas Nebraska Natural Gas Co., Inc. (West Reydon Field, Roger Mills County, Okla.) (Oklahoma "Other" Area).	3,121	3-2-70	[1] 4-2-70	9-2-70	[10] [15] 15.30	[1] [10] [15] [16] 17.34	
RI70-1440	Roy A. Godfrey, Box G, Madill, Okla. 73446.	1	1	Lone Star Gas Co. (Southeast Aylesworth Field, Bryan County, Okla.) (Oklahoma "Other" Area).	2,020	3-2-70	[1] 4-2-70	9-2-70	15.0	[10] 16.01	
RI70-1441	Yucca Petroleum Co. (Operator) et al., Post Office Box 2585, Amarillo, Tex. 79105.	15	2	Michigan Wisconsin Pipe Line Co. (Northwest Quinlan (Chester Line) Field, Woodward County, Okla.) (Panhandle Area).	6,722	3-5-70	[1] 4-5-70	9-5-70	[10] [11] 17.46	[1] [10] [17] [18] 20.906	
RI70-1442	Earl T. Smith d.b.a. Earl T. Smith & Associates (Operator) et al., 208 Bank of the Southwest Bldg., Amarillo, Tex. 79909.	1	2	Panhandle Eastern Pipe Line Co. (North Hopeton Field, Woods County, Okla.) (Oklahoma "Other" Area).	1,200	3-6-70	[1] 4-6-70	9-6-70	[10] 15.0	[1] [10] [19] 17.0	
RI70-1443	R. C. Wynn	1	[12] 7	El Paso Natural Gas Co. (Blanco Mesa Verde Pool, San Juan County, N. Mex.) (San Juan Basin Area).	272	3-2-70	[1] 4-2-70	9-2-70	13.0	[1] [20] 15.2093	
		1	[20] 8		272	3-6-70	[1] 4-6-70	9-6-70	13.0	[1] [20] 15.2093	
	do	2	[20] 5	El Paso Natural Gas Co. (Basin Dakota Pool, San Juan County, N. Mex.) (San Juan Basin Area).	120	3-2-70	[1] 4-2-70	9-2-70	13.0	[1] 14.0	
		2	[20] 6		120	3-6-70	[1] 4-6-70	9-6-70	13.0	[1] 14.0	

See footnotes at end of table.

APPENDIX A—Continued

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI70-1444..	Joseph B. Gould.....	4	2	El Paso Natural Gas Co. (Ignacio Blanco Field, La Plata County, Colo.).	$289	3- 2-70	[1] 4-2-70	9-2-70	14.0	[17] 15.0	

[1] The stated effective date is the first day after expiration of the statutory notice.
[2] Periodic rate increase.
[3] Pressure base is 14.65 p.s.i.a.
[4] Contract agreement provides among other things a renegotiated rate of 20.6 cents for the 5-year period commencing with the date that deliveries begin under the agreement, with 1-cent increases every 5 years. Also ¾-tax reimbursement for future taxes.
[5] Renegotiated rate increase.
[6] Pressure base is 15.025 p.s.i.a.
[7] The stated effective date is the effective date requested by respondent.
[8] Pressure base is 14.65 p.s.i.a.
[9] Subject to a downward B.t.u. adjustment.
[10] Applicable only to acreage added by Supplement No. 38 (Inman Unit).
[11] "Fractured" rate increase.
[12] Includes 1-cent upward B.t.u. adjustment.
[13] Subject to upward and downward B.t.u. adjustment.
[14] Subject to upward and downward B.t.u. adjustment.
[15] Applicable only to acreage added by Supplement No. 2.
[16] Filing from initial certificated rate to initial contract rate plus tax reimbursement.
[17] Includes base rate of 17 cents before increase and base rate of 19 cents after increase plus upward B.t.u. adjustment and tax reimbursement. Base rate subject to upward and downward B.t.u. adjustment.
[18] Filing from initial certificated rate to initial contract rate.
[19] Includes 15 cents base price before increase and 17 cents after increase plus upward B.t.u. adjustments.
[20] Includes 17 cents base price before increase and 19.5 cents after increase plus upward B.t.u. adjustment plus tax reimbursement after increase.
[21] For acreage added by Supplement No. 5.
[22] For acreage added by Supplement No. 6.
[23] For acreage added by Supplement No. 2.
[24] For acreage added by Supplement No. 3.
[25] Includes partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax.

Continental Oil Co. requests a retroactive effective date of November 1, 1969, for its proposed rate increase. Graham-Michaelis Drilling Co. and Phillips Petroleum Co. request an effective date of March 2, 1970, for their proposed rate increases. Pan American Petroleum Corp. requests an effective date of April 1, 1970, for Supplemental No. 2 to its FPC Gas Rate Schedule No. 492. Roy A. Godfrey and Earl T. Smith, doing business as Earl T. Smith & Associates (Operator) et al., also request an effective date of April 1, 1970, for their proposed rate increases. Yucca Petroleum Co. requests a retroactive effective date of April 8, 1968, and Joseph B. Gould requests a retroactive effective date of January 1, 1969, for his proposed rate increase. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit earlier effective dates for the aforementioned producers' rate filings and such requests are denied.

Concurrently with the filing of its rate increase, B & D Corp. (B & D submitted a contract agreement, designated as Supplement No. 1 to B & D's FPC Gas Rate Schedule No. 1, which provides the basis for its proposed rate increase. We believe that it would be in the public interest to accept for filing B & D's contract agreement to become effective as of April 4, 1970, the expiration date of the statutory notice, but not the proposed rate contained therein which is suspended as ordered herein.

Supplement Nos. 7 and 8 to R. C. Wynn's (Wynn), FPC Gas Rate Schedule No. 1 reflect partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax. The buyer, El Paso Natural Gas Co. (El Paso), in accordance with its policy of protesting tax filings proposing reimbursement for the New Mexico Emergency School Tax in excess of 0.55 percent, is expected to file a protest to these rate increases. El Paso questions the right of the producer under the tax reimbursement clause to file a rate increase reflecting tax reimbursement computed on the basis of an increase in tax rate by the New Mexico Legislature in excess of 0.55 percent. While El Paso concedes that the New Mexico legislature effected a higher rate of at least 0.55 percent, they claim there is controversy as to whether or not the new legislation effected an increased rate in excess of 0.55 percent. In view of the contractual problem presented, the hearing provided for herein for Wynn's rate filings shall concern itself with the contractual basis for such rate filings, as well as the statutory lawfulness of the proposed increased rates and charges.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61–1, as amended (18 CFR, chapter I, Part 2, section 2.56).

[F.R. Doc. 70–4225; Filed, Apr. 8, 1970; 8:45 a.m.]

[Docket No. RI70–1445]

PAN AMERICAN PETROLEUM CORP.

Order Providing for Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

MARCH 31, 1970.

Respondent named herein has filed a proposed change in rate and charge of a currently effective rate schedule for the sale of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date suspended until" Column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplement to the rate schedule filed by respondent shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order respondent shall execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of a copy thereof upon the purchaser under the rate schedule involved. Unless respondent is advised to the contrary within 15 days after the filing of its agreement and undertaking, such agreement and undertaking shall be deemed to have been accepted.[1]

(C) Until otherwise ordered by the Commission, neither the suspended supplement, nor the rate scheduled sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37 (f)) on or before May 15, 1970.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[1] If an acceptable general undertaking, as provided in Order No. 377, has previously been filed by a producer, then it will not be necessary for that producer to file an agreement and undertaking as provided herein. In such circumstances the producer's proposed increased rate will become effective as of the expiration of the suspension period without any further action by the producer.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI70-1445..	Pan American Petroleum Corp., Post Office Box 3092, Houston, Tex. 77001.	54	[1] 6	Natural Gas Pipeline Co. of America		3-2-70	[2] 4-2-70	Accepted			
		54	[1] 7	(Urbana Field, San Jacinto County,		3-2-70	[2] 4-2-70	Accepted			
		54	8	Tex.) (RR. District No. 3).	$7,665	3-2-70	[2] 4-2-70	[4] 4-3-70	12.5	[5] 14.0	

[1] Notifies Natural Gas Pipeline of Pan Am's election to terminate the Nov. 25, 1953, contract, effective Apr. 1, 1970.
[2] The stated effective date is the first day after expiration of the statutory notice.
[3] The suspension period is limited to 1 day.
[4] States conditions under which the sale of gas will continue.
[5] "Ex Parte" rate increase.
[6] Pressure base is 14.65 p.s.i.a.

Pan American Petroleum Corp. (Pan American) proposes an "ex parte" rate increase, from 12.5 cents to 14 cents per Mcf, for sales of natural gas to Natural Gas Pipeline Co. of America (Natural), in Texas Railroad District No. 3.

Pan American's contract with Natural is to be canceled, effective April 1, 1970. Pan American is to continue to deliver gas to Natural on a day to day basis pursuant to most of the provisions of the contract being canceled, but reserves the right to change any or all of the provisions, including the price, unilaterally, subject only to the requirement of the Natural Gas Act and to the rules and regulations of the Commission.

Although Pan American's proposed rate is equal to the area increased rate ceiling, we believe it should be suspended for 1 day from April 2, 1970, the expiration date of the statutory notice, since Pan American did not submit a waiver of its right to file for a higher rate.

Concurrently with the filing of its rate increase, Pan American submitted a document which states the conditions under which the sale of gas will continue, designated as Supplement No. 6 to Pan American's FPC Gas Rate Schedule No. 54, and notification to Natural of Pan American's election to terminate the November 25, 1953, contract, effective as of April 1, 1970, designated as Supplement No. 7 to Pan American's FPC Gas Rate Schedule No. 54. We believe that it would be in the public interest to accept for filing Pan American's aforementioned supplements to become effective as of April 2, 1970, the expiration date of the statutory notice.

[F.R. Doc. 70-4226; Filed, Apr. 8, 1970; 8:45 a.m.]

FEDERAL RESERVE SYSTEM

BRENTON BANKS, INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)), by Brenton Banks, Inc., which is a bank holding company located in Des Moines, Iowa, for prior approval by the Board of Governors of the acquisition by applicant of 80 percent or more of the voting shares of The Fidelity Savings Bank, Marshalltown, Iowa.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Chicago.

By order of the Board of Governors, April 1, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-4286; Filed, Apr. 8, 1970; 8:45 a.m.]

CENTRAL COLORADO BANCORP, INC.

Order Approving Application Under Bank Holding Company Act

In the matter of the application of Central Colorado Bancorp, Inc., Colorado Springs, Colo., for approval of action to become a bank holding company through the acquisition of 67 percent or more of the voting shares of The Central Colorado Bank and The Academy Boulevard Bank, both in Colorado Springs, Colo.

There has come before the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(1)), an application by Central Colorado Bancorp, Inc., Colorado Springs, Colo., for the Board's prior approval of action whereby Applicant would become a bank holding company through the acquisition of 67 percent or more of the voting shares of The Central Colorado Bank and The Academy Boulevard Bank, both in Colorado Springs, Colo. Applicant presently owns 71 percent of the voting shares of The Rocky Ford National Bank, Rocky Ford, Colo.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Colorado State Bank Commissioner and required his views and recommendation. The Commissioner recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on September 23, 1969 (34 F.R. 14710), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's Statement[1] of this date, that said application be and hereby is approved: *Provided*, That the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[2] March 31, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-4287; Filed, Apr. 8, 1970; 8:45 a.m.]

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Kansas City.

[2] Voting for this action: Chairman Burns and Governors Robertson, Maisel, Brimmer, and Sherrill. Absent and not voting: Governors Mitchell and Daane.

CHARTER BANKSHARES CORP.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Charter Bankshares Corp., Jacksonville, Fla., for approval of acquisition of 52 percent or more of the voting shares of Citizens Bank of Lehigh Acres, Lehigh Acres, Fla.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), and § 222.3(a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Charter Bankshares Corp., Jacksonville, Fla., a registered bank holding company, for the Board's prior approval of the acquisition of 52 percent or more of the voting shares of Citizens Bank of Lehigh Acres, Lehigh Acres, Fla.

As required by section 3(b) of the Act, the Board notified the Florida Commissioner of Banking of receipt of the application and requested his views and recommendation. The Commissioner recommended that the application be approved.

Notice of receipt of the application was published in the FEDERAL REGISTER on November 27, 1969 (34 F.R. 18994), providing an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's Statement[1] of this date, that said application be and hereby is approved: *Provided*, That the acquisition so approved shall not be consummated (a) before the 30th calendar day following the date of this order, or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[2] March 31, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-4288; Filed, Apr. 8, 1970; 8:45 a.m.]

CHARTER BANKSHARES CORP.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Charter Bankshares Corp., Jacksonville, Fla., for approval of acquisition of 80 percent or more of the voting shares of The Commercial Bank of Gainesville, Gainesville, Fla.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), and § 222.3(a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Charter Bankshares Corp., Jacksonville, Fla., a registered bank holding company, for the Board's prior approval of the acquisition of 80 percent or more of the voting shares of The Commercial Bank of Gainesville, Gainesville, Fla.

As required by section 3(b) of the Act, the Board notified the Florida Commissioner of Banking of receipt of the application and requested his views and recommendation. The Commissioner recommended that the application be approved.

Notice of receipt of the application was published in the FEDERAL REGISTER on November 27, 1969 (34 F.R. 18994), providing an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's Statement[1] of this date, that said application be and hereby is approved: *Provided*, That the acquisition so approved shall not be consummated (a) before the 30th calendar day following the date of this order, or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[2] March 31, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-4289; Filed, Apr. 8, 1970; 8:45 a.m.]

CHARTER BANKSHARES CORP.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Charter Bankshares Corp., Jacksonville, Fla., for approval of acquisition of 52 percent or more of the voting shares of The Exchange Bank of Palatka, Palatka, Fla.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), and § 222.3(a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Charter Bankshares Corp., Jacksonville, Fla., a registered bank holding company, for the Board's prior approval of the acquisition of 52 percent or more of the voting shares of The Exchange Bank of Palatka, Palatka, Fla.

As required by section 3(b) of the Act, the Board notified the Florida Commissioner of Banking of receipt of the application and requested his views and recommendation. The Commissioner recommended that the application be approved.

Notice of receipt of the application was published in the FEDERAL REGISTER on November 27, 1969 (34 F.R. 18994), providing an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's Statement[1] of this date, that said application be and hereby is approved: *Provided*, That the acquisition so approved shall not be consummated (a) before the 30th calendar day following the date of this order, or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[2] March 31, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-4290; Filed, Apr. 8, 1970; 8:45 a.m.]

CHARTER NEW YORK CORP.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Charter New York Corp., New York, N.Y., for approval of acquisition of all of the voting shares of Ogdensburg Trust Co., Ogdensburg, N.Y.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3(a) of Federal Reserve Regulation

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Atlanta. Dissenting statement of Governor Robertson also filed as part of the original document and available upon request.

[2] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, and Sherrill. Voting against this action: Governor Robertson. Absent and not voting: Governor Brimmer.

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Atlanta. Dissenting statement of Governor Robertson also filed as part of the original document and available upon request.

[2] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, and Sherrill. Voting against this action: Governor Robertson. Absent and not voting: Governor Brimmer.

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Atlanta. Dissenting statement of Governor Robertson also filed as part of the original document and available upon request.

[2] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, and Sherrill. Voting against this action: Governor Robertson. Absent and not voting: Governor Brimmer.

Y (12 CFR 222.3(a)), an application by Charter New York Corp., New York, N.Y., a registered bank holding company, for the Board's prior approval of the acquisition of all of the voting shares of Ogdensburg Trust Co., Ogdensburg, N.Y.

As required by section 3(b) of the Act, the Board notified the New York Superintendent of Banks of receipt of the subject application and requested his views and recommendation. The Superintendent indicated that he favored approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on February 27, 1970 (35 F.R. 3846), which provided an opportunity for interested persons to submit comments and views with respect to the proposed acquisition. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's Statement[1] of this date, that said application be and hereby is approved: *Provided*, That the acquisition so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of New York pursuant to delegated authority.

By order of the Board of Governors,[2] March 31, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-4291; Filed, Apr. 8, 1970; 8:45 a.m.]

FIRST AT ORLANDO CORP.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of First at Orlando Corp., Orlando, Fla., for approval of acquisition of at least 80 percent of the voting shares of Citizens Bank of Gainesville, Gainesville, Fla.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), and § 222.3(a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), the application of First at Orlando Corp., Orlando, Fla., for the Board's prior approval of the acquisition of at least 80 percent of the voting shares of Citizens Bank of Gainesville, Gainesville, Fla.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Florida Commissioner of Banking and requested his views and recommendation. The Commissioner recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on February 3, 1970 (35 F.R. 2469), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's Statement[1] of this date, that said application be and hereby is approved: *Provided*, That the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order unless such time shall be extended by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[2] April 2, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-4292; Filed, Apr. 8, 1970; 8:45 a.m.]

FIRST VIRGINIA BANKSHARES CORP.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)), by First Virginia Bankshares Corp., which is a bank holding company located in Arlington, Va., for prior approval by the Board of Governors of the acquisition by Applicant of 90 percent of the voting shares of First Atlantic Bank, Hampton, Va., a proposed new bank.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Richmond.

By order of the Board of Governors, April 2, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-4293; Filed, Apr. 8, 1970; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[70-4864]

ALABAMA POWER CO.

Notice of Proposed Issue of First Mortgage Bonds for Sinking Fund Purposes

APRIL 3, 1970.

Notice is hereby given that Alabama Power Co. ("Alabama"), 600 North 18th Street, Birmingham, Ala. 35202, a public-utility subsidiary company of The Southern Co., a registered holding company, has filed a declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 thereof as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Alabama proposes, on or prior to June 1, 1970, to issue $5,153,000 principal amount of its First Mortgage Bonds, 4⅞ percent Series due 1987, under the provisions of its indenture dated as of January 1, 1942, between Alabama and Chemical Bank, as Trustee, as amended and supplemented, and to surrender such bonds to the Trustee in accordance with the sinking fund provisions. The bonds are to be identical with those authorized by the Commission on April 30, 1957 (Holding Company Act Release No. 13457) and are to be issued on the basis of property additions, thus making available for construction and other purposes cash which would otherwise be required to satisfy the sinking fund requirements

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of New York.

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, and Sherrill. Absent and not voting: Governor Brimmer.

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Atlanta.

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Maisel and Brimmer. Absent and not voting: Governors Daane and Sherrill.

or to purchase bonds for such purpose.

The fees and expenses to be paid by Alabama in connection with the issuance of the bonds are estimated at $1,750, including $750 for charges of the Trustee and counsel fee of $500. It is stated that the issuance of the sinking fund bonds has been authorized by the Alabama Public Service Commission. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than April 27, 1970, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-4329; Filed, Apr. 8, 1970; 8:49 a.m.]

[70-4863]

GULF POWER CO.

Notice of Proposed Issue of First Mortgage Bonds for Sinking Fund Purposes

APRIL 3, 1970.

Notice is hereby given that Gulf Power Co. ("Gulf"), Post Office Box 1151, Pensacola, Fla. 32502, a public-utility subsidiary company of The Southern Co., a registered holding company, has filed a declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a) and 7 thereof as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Gulf proposes, on or prior to June 1, 1970, to issue $950,000 principal amount of its First Mortgage Bonds, 3¼ percent Series due 1984, under the provisions of its indenture dated as of September 1, 1941, between Gulf and The Chase Manhattan Bank and the Citizens & Peoples National Bank of Pensacola, as Trustees, as amended and supplemented, and to surrender such bonds to the Trustees in accordance with the sinking fund provisions. The bonds are to be identical with those authorized by the Commission on June 14, 1954 (Holding Company Act Release No. 12543) and are to be issued on the basis of property additions, thus making available for construction and other purposes cash which would otherwise be required to satisfy the sinking fund requirement or to purchase bonds for such purpose.

The fees and expenses to be paid by Gulf in connection with the issue of the bonds are estimated at $1,075, including charges of Trustees of $625 and counsel fee of $250. It is stated that The Florida Public Service Commission has expressly authorized the issue of the bonds. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than April 27, 1970, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-4330; Filed, Apr. 8, 1970; 8:49 a.m.]

[File No. 500-1]

SELECT ENTERPRISES, INC.

Order Suspending Trading

APRIL 1, 1970.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Select Enterprises, Inc., a Nevada corporation, and all other securities of Select Enterprises, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period April 2, 1970 through April 11, 1970 both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-4332; Filed, Apr. 8, 1970; 8:49 a.m.]

[70-4862]

MISSISSIPPI POWER CO.

Notice of Proposed Issue of First Mortgage Bonds for Sinking Fund Purposes

APRIL 3, 1970.

Notice is hereby given that Mississippi Power Co. ("Mississippi"), 2500 14th Street, Gulfport, Miss. 39501, a public-utility subsidiary company of the Southern Co., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 thereof as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Mississippi proposes, on or prior to June 1, 1970, to issue $986,000 principal amount of its first mortgage bonds, 4⅝ percent series due 1987, under the provisions of its indenture dated as of September 1, 1941, between Mississippi and Morgan Guaranty Trust Company of New York, as trustee, as amended and supplemented, and to surrender such bonds to the trustee in accordance with the sinking fund provisions. The bonds are to be identical with those authorized by the Commission on April 3, 1957 (Holding Company Act Release No. 13437) and are to be issued on the basis of property additions, thus making available for construction and other purposes cash which would otherwise be required to satisfy the sinking fund requirement or to purchase bonds for such purpose.

The fees and expenses to be paid by Mississippi in connection with the issuance of the bonds are estimated at $750,

including counsel fee of $250. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than April 27, 1970, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70-4331; Filed, Apr. 8, 1970; 8:49 a.m.]

DEPARTMENT OF LABOR

Office of Federal Contract Compliance

IMPLEMENTATION OF REQUIREMENTS AND OBJECTIVES OF EXECUTIVE ORDER 11246

Notice of Hearing

Notice is hereby given that, pursuant to section 208(a) of Executive Order 11246 (30 F.R. 12319), a public hearing is to be held by the Office of Federal Contract Compliance, U.S. Department of Labor on Monday, April 13, 1970 and Tuesday, April 14, 1970 in Conference Room B, Departmental Auditorium, Constitution Avenue between 12th and 14th Streets NW., Washington, D.C., in order to afford interested persons an opportunity to submit in writing and orally data, views, or arguments to be considered by the Office of Federal Contract Compliance in implementing the requirements and objectives of Executive Order 11246 in federally involved construction in the Washington, D.C. area. The hearing will begin at 9:30 a.m., e.s.t. on Monday, April 13, 1970. The presentations will be made before a panel designated for this purpose by the Director of the Office of Federal Contract Compliance. Interested persons are encouraged to appear and present their views before the panel.

Specific information and data is requested to include, but not necessarily be limited to:

(1) the current extent of minority group participation in each construction trade, and the full employee complement of each trade;

(2) A statement and evaluation of present employee recruitment methods, as well as the assistance and effectiveness of any employer or union programs to increase minority participation in the trades;

(3) The availability of qualified and qualifiable minority group persons for employment in each construction trade, including where they are now working, how they may be brought into the trades, etc.;

(4) An evaluation of existing training programs in the area, including the number of minorities and others recruited into the programs, the number who complete training, the length and extent of training, employer experience with trainees, the need for additional or expanded training programs, etc.;

(5) An analysis of the number of additional workers that could be absorbed into each trade without displacing present employees, including consideration of present employee shortages, projected growth of the trade, projected employee turnover, etc.;

(6) The availability and utilization of minority contractors on federally involved contracts;

(7) The desirability and extent, including the geographical scope of possible Federal action to ensure equal employment opportunity in the construction trades.

Interested persons wishing to present orally their views before the panel should notify the Office of Federal Contract Compliance, U.S. Department of Labor, 14th Street and Constitution Avenue NW., Washington, D.C. 20210 (telephone: 202-961-4061) of their intention to appear as early as possible, and of the approximate amount of time which they expect their presentations to take, so as to facilitate an orderly scheduling of witnesses. All persons desiring to file written statements and pertinent information relative to this hearing may do so by filing the same with the Office of Federal Contract Compliance on or before Friday, April 17, 1970.

Executive Order 11246 prohibits discriminating against any employee or applicant for employment because of race color, religion, sex, or national origin, and further requires that the employer or prospective employer take affirmative action to insure equal employment opportunity.

It is the responsibility of the Secretary of Labor and his Department to implement the purposes of Executive Order 11246 throughout the country on federally involved construction. The Department recognizes that circumstances and problems in the field of equal employment opportunity vary from one area of the country to another, and that those living and working in a specific area are in a unique position to assist the Department with facts and ideas as to the most effective way to implement the Executive order. It is this assistance which is sought at the above noticed hearing.

It is the declared policy of the Department of Labor that a local agreement among contractors, unions and minority groups in the community is preferable to the imposition of specific requirements by this Department. Thus, if such an agreement can be reached for the Washington, D.C. area prior to June 1, 1970, the Department will not need to impose Federal requirements. However, if an agreement is not concluded by that date, this Department will immediately proceed to implement its responsibilities consistent with the information it obtains from the hearings herein noticed and from other sources. The parties are urged to explore, examine and enter into such an agreement. This Department offers its technical assistance to the parties and upon request will provide them with appropriate guidelines and examples of model area-wide agreements designed to meet the equal employment obligations of Washington, D.C., construction contractors.

Copies of the Executive Order 11246 may be obtained from and requests for technical assistance may be directed to the Office of Federal Contract Compliance, Department of Labor, 14th Street and Constitution Avenue, Washington, D.C. 20210.

Signed at Washington, D.C., this 7th day of April 1970.

JOHN L. WILKS,
Director, Office of Federal Contract Compliance.

[F.R. Doc. 70-4383; Filed, Apr. 8, 1970; 8:52 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 34]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER APPLICATIONS

APRIL 3, 1970.

The following applications are governed by Special Rule 1.247 [1] of the Commission's General Rules of Practice (49 CFR 1100.247 as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the Special Rules, and shall include the certification required therein.

Section 247(f) of the Commission's Rules of Practice further provide that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's General Policy Statement Concerning Motor Carrier Licensing Procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record.

The publications hereinafter set forth reflect the scope of the applications as filed by applicants, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

No. MC 11207 (Sub-No. 297), filed March 13, 1970. Applicant: DEATON, INC., 317 Avenue W, Post Office Box 1271, Birmingham, Ala. 35201. Applicant's representative: Robert Pearce, 1033 State Street, Central Building, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from points in Alabama (except Birmingham, Ala., and points within 10 miles of Birmingham, Alabama City, Gadsden, Anniston, and Talladega), to points in North Carolina and South Carolina; and (2) *iron and steel articles*, from points in North Carolina and South Carolina to points in Alabama. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala.

No. MC 29120 (Sub-No. 114) (Correction), filed February 5, 1970, published FEDERAL REGISTER issue of March 12, 1970, corrected and republished as corrected this issue. Applicant: ALL-AMERICAN TRANSPORT, INC., 1500 Industrial Avenue, Post Office Box 769, Sioux Falls, S. Dak. 57101. Applicant's representative: E. J. Dwyer (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, livestock, and commodities injurious or contaminating to other lading) from Louisville, Ky., to Minneapolis-St. Paul, Minn., from Louisville over Interstate Highway 65 to junction U.S. Highway 31, thence over U.S. Highway 31 to junction Interstate Highway 465, thence over Interstate Highway 465 to junction Interstate Highway 65, thence over Interstate Highway 65 to junction U.S. Highway 52, thence over U.S. Highway 52 to junction U.S. Highway 41, thence over U.S. Highway 41 to junction Interstate Highway 90, thence over Interstate Highway 90 to junction Interstate Highway 94, thence over Interstate Highway 94 to Minneapolis-St. Paul, serving no intermediate points, as an alternate route for operating convenience only, and with no service for compensation on return except as otherwise authorized. NOTE: Common control may be involved. The purpose of this republication is to show a one-way route from Louisville, Ky., to Minneapolis, Minn., rather than a "between" route as previously published. If a hearing is deemed necessary, applicant requests it be held at Sioux Falls, S. Dak.

No. MC 35320 (Sub-No. 117), filed March 11, 1970. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, Post Office Box 2550, Lubbock, Tex. Applicant's representatives: W. D. Benson, Post Office Box 6723, Lubbock, Tex. 79413, and Frank M. Garrison (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Air cleaners, coolers* other than water evaporative type, between Decatur, Ala., and Memphis, Tenn., from Decatur over U.S. Highway Alternate 72 to junction U.S. Highway 43 and U.S. Highway 72, thence over U.S. Highway 72 to Memphis, Tenn., and over the same route, serving no intermediate points. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 47142 (Sub-No. 106), filed March 12, 1970. Applicant: C. I. WHITTEN TRANSFER COMPANY, a corporation, 4417 Earl Court, Huntington, W. Va. 25705. Applicant's representative: George Joline, Suite 117, 2500 North Van Dorn Street, Alexandria, Va. 22302. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities* of a security classified nature, when transported in carrier-owned dromedary equipment, between activities of the U.S. Government and U.S. Government contractors located in Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 56388 (Sub-No. 34), filed March 10, 1970. Applicant: HAHN TRANSPORTATION, INC., New Market, Md. 21774. Applicant's representative: Francis J. Ortman, 1700 Pennsylvania Avenue NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Limestone and limestone products*, from Frederick, Md., to points in North Carolina on and east of U.S. Highway 29. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 61592 (Sub-No. 170), filed March 9, 1970. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, Iowa 52722. Applicant's representative: R. Connor Wiggins, Jr., 100 North Main Building, Memphis, Tenn. 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles*, between Memphis, Tenn., and points in Kentucky. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 61592 (Sub-No. 171), filed March 9, 1970. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, Iowa 52722. Applicant's representative: R. Connor Wiggins, Jr., 100 North Main Building, Memphis, Tenn. 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, furniture parts and accessories therefor; textiles and textile products*, between points in Alabama, Florida, Georgia, North Carolina, and South Carolina on the one hand, and, on the other, points in New Mexico, Oklahoma, and Texas. NOTE: Common control may

be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 64932 (Sub-No. 486), filed March 18, 1970. Applicant: ROGERS CARTAGE CO., a corporation, 1439 West 103d Street, Chicago, Ill. 60643. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from Van Wert, Ohio, to points in Indiana, Kentucky, Michigan, and West Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Columbus, Ohio.

No. MC 65626 (Sub-No. 25), filed March 17, 1970. Applicant: FREDONIA EXPRESS, INC., Post Office Box 222, 316 Eagle Street, Fredonia, N.Y. 14063. Applicant's representative: E. Stephen Heisley, 705 McLachlen Bank Building, 666 11th Street NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sugar*, from Philadelphia, Pa., to points in Allegany, Chautauqua, Cattaraugus, Erie, Genesee, Monroe, Orleans, Steuben, and Wyoming Counties, N.Y. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa.

No. MC 69901 (Sub-No. 23), filed March 16, 1970. Applicant: COURIER-NEWSOM EXPRESS, INC., Post Office Box 509, Columbus, Ind. 47201. Applicant's representative: Jack Goodman, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plantsite and related facilities of Olin Corp. located in Cass County, Ind., approximately 5½ miles northwest of Peru, Ind., as an off-route point in connection with applicant's presently authorized regular route operations; (1) between Detroit, Mich., and Lafayette, Ind.; and (2) between Kokomo and South Bend, Ind. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or any point convenient to the Commission.

No. MC 73165 (Sub-No. 281), filed March 13, 1970. Applicant: EAGLE MOTOR LINES, INC., 830 North 33d Street, Post Office Box 1348, Birmingham, Ala. 35201. Applicant's representative: Robert M. Pearce, Post Office Box E, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, between points in Jackson County, Ark., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn.

No. MC 80428 (Sub-No. 72), filed March 18, 1970. Applicant: McBRIDE TRANSPORTATION, INC., Main and Nelson Streets, Goshen, N.Y. 10924. Applicant's representative: Raymond A. Richards, 23 West Main Street, Webster, N.Y. 14580. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, from Seneca Lake Mine, Mile Township (Yates County), N.Y., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, New Hampshire, Pennsylvania, Rhode Island, and Vermont. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 90794 (Sub-No. 5), filed March 26, 1970. Applicant: LIFT VAN TRANSPORT CO., INC., 358 St. Marks Place, Staten Island, N.Y. 10301. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, N.Y. 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), in containers or trailers, between points in the New York, N.Y., commercial zone as defined by the Commission, on the one hand, and, on the other, points in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, those in that part of Pennsylvania on and east of a line beginning at the Pennsylvania-New York State line at or near Lawrenceville, Pa., and extending along U.S. Highway 15 to junction U.S. Highway 11 at or near Camp Hill, Pa., thence along U.S. Highway 11 to the Pennsylvania-Maryland State line, those in that part of New York on and east of a line beginning at the New York-Pennsylvania State line at or near Lawrenceville, Pa., and extending along U.S. Highway 15 to Corning, N.Y., and thence along New York Highway 17 to Horseheads, N.Y., thence along New York Highway 13 to Cortland, N.Y., thence along U.S. Highway 11 to Syracuse, N.Y., thence along New York Highway 5 to Schnectady, N.Y., thence along New York Highway 50 to Saratoga Springs, N.Y., thence along U.S. Highway 9 via Glens Falls, N.Y., to junction New York Highway 149, thence along New York Highway 149 to junction U.S. Highway 4, at or near Fort Ann, N.Y., thence along U.S. Highway 4 to the New York-Vermont State line at or near Fair Haven, Vt., and points in Rhode Island, on traffic having a prior or subsequent movement by water. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore, does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 98088 (Sub-No. 20), filed March 12, 1970. Applicant: LINDLEY TRUCKING SERVICE, INC., 1701 Grand Avenue, Granite City, Ill. 62040. Applicant's representative: Richard Chasteen (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials, gypsum and gypsum products; and materials, equipment and supplies* used in the manufacturing, installation, and distribution thereof, from Fort Dodge, Iowa, to points in Missouri on and east of U.S. Highway 65, and points in that part of Illinois on and south of U.S. Highway 34 from the Illinois-Iowa State line to Galesburg, Ill., thence on and south of Interstate Highway 74 and/or U.S. Highway 150 to the Illinois-Indiana State line. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., Des Moines, Iowa, or Tampa, Fla.

No. MC 98542 (Sub-No. 5), filed March 9, 1970. Applicant: COLLINS & SIMMONS, INC., Post Office Box 134, Wolcott, N.Y. 14590. Applicant's representative: Raymond A. Richards, 23 West Main Street, Webster, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (other than frozen and other than in bulk), from Hamlin, Holley, and Williamson, N.Y., to points in Connecticut, Massachusetts, and Rhode Island. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 100623 (Sub-No. 24) (Clarification), filed January 23, 1970, published in the FEDERAL REGISTER issue of February 27, 1970, and republished in part, as clarified, this issue. Applicant: HOURLY MESSENGERS, INC., doing business as H. M. PACKAGE DELIVERY SERVICE, 20th and Indiana Avenue, Philadelphia, Pa. 19132. Applicant's representatives: V. Baker Smith and James W. Patterson, 2107 The Fidelity Building, Philadelphia, Pa. 19109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment, cash letters, cash and currency, narcotics, and processed and unprocessed film). NOTE: The purpose of this partial republication is to clarify the commodity description in the application as pertains to exceptions to general commodities. The rest of the application remains as previously published.

No. MC 103191 (Sub-No. 29), filed March 13, 1970. Applicant: THE GEO. A. RHEMAN CO., INC., Post Office Box 2095, Station A, Charleston, S.C. 29403. Applicant's representative: Beverly S. Simms, 1100 17th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty collapsible containers*, when moving with petroleum products, in bulk, in tank vehicles, between Charleston, S.C., on the one hand, and, on the other, points in Alabama, Florida, Georgia, Kentucky, North Carolina, and Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. It further states no duplicate authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Charleston or Columbia, S.C.

No. MC 107295 (Sub-No. 309), filed February 27, 1970. Applicant: PRE-FAB TRANSIT CO., a corporation, 100 South Main Street, Farmer City, Ill. 61842. Applicant's representative: Dale L. Cox (same address as applicant). Authority is sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials*, from Madison, Ill., to points in Arkansas, Kentucky, Missouri, and Tennessee. NOTE: Applicant states that tacking may take place at Henry County, Tenn., for transportation beyond as authorized in MC 107295 Sub-No. 128. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo.

No. MC 107295 (Sub-No. 310), filed February 27, 1970. Applicant: PRE-FAB TRANSIT CO., 100 South Main Street, Farmer City, Ill. 61842. Applicant's representative: Dale L. Cox, 100 South Main Street, Farmer City, Ill. 61842. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Heating, cooling, and ventilating systems, equipment and supplies*, from Holland and Pemberville, Ohio, to points in the United States (except Ohio and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Toledo or Columbus, Ohio.

No. MC 107295 (Sub-No. 329), filed March 6, 1970. Applicant: PRE-FAB TRANSIT CO., a corporation, 100 South Main Street, Farmer City, Ill. 61842. Applicant's representative: Dale L. Cox (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, transported on their own or removable undercarriages, *recreational units, mobile homes, and buildings*, complete, knocked down, or sections, from Alama, Mich.; Grand Island, Nebr.; Americus and Richland, Ga.; Ephrata, Hazelton, and Honey Brook, Pa.; Boaz, Ala.; Grand Prairie and Athens, Tex.; Tulsa, Okla.; Washington Court House, Ohio; and Topeka, Ind., to points in the United States, except Hawaii. NOTE: Applicant states that tacking may take place at Hazelton, Ephrata, or Honey Brook, Pa.; Washington Court House, Ohio; Topeka, Ind.; Grand Island, Nebr.; Richland or Americus, Ga.; Alama, Mich.; Boaz, Ala.; Tulsa, Okla.; or Grand Prairie or Athens, Tex., on traffic originating in points authorized in MC 107295 and subs thereto for transportation beyond. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 107295 (Sub-No. 330), filed March 6, 1970. Applicant: PRE-FAB TRANSIT CO., a corporation, 100 South Main Street, Farmer City, Ill. 61842. Applicant's representative: Dale L. Cox (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobile and *buildings*, complete or in sections; (1) from points in McLennan County, Tex., to points in the United States (except Hawaii); (2) from points in Coffee County, Ga., to points in the United States (except Hawaii); (3) from points in Richland County, Ohio, to points in the United States (except Hawaii); (4) from points in McDonough County, Ill., to points in the United States (except Hawaii); (5) from points in Franklin County, Va., to points in the United States (except Hawaii); (6) from points in Holmes County, Miss., to points in the United States (except Hawaii); and (7) from points in Sumner County, Tenn., to points in the United States (except Hawaii). NOTE: Applicant states no duplicate authority is being sought. Applicant further states tacking may take place at the (7) named origins above, on traffic originating at points in MC 107295 and Subs thereto, for transportation beyond. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 107295 (Sub-No. 331), filed March 12, 1970. Applicant: PRE-FAB TRANSIST CO., a corporation, 100 South Main Street, Farmer City, Ill. 61842. Applicant's representative: Dale L. Cox (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberboard, pulpboard, strawboard, and wallboard*, from Henderson, Ky., to points in Alabama, Colorado, Indiana, Georgia, Kansas, Michigan, Ohio, Pennsylvania, and Texas. NOTE: Applicant states tacking may take place at Toledo, Ohio, on traffic originating at Henderson, Ky., for movement to points in the United States as authorized. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., or Nashville, Tenn.

No. MC 107295 (Sub-No. 332), filed March 16, 1970. Applicant: PRE-FAB TRANSIT CO., a corporation, 100 South Main Street, Post Office Box 146, Farmer City, Ill. 61842. Applicant's representative: Dale L. Cox (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel doors, steel door frames; steel window frames; and elevator cars; and accessories*, from the plantsite and warehouse facilities of Williamsburg Steel Products Co., Brooklyn, N.Y., to points in North Carolina, South Carolina, Georgia, Florida, and the District of Columbia. NOTE: Applicant states that the nature of the application does not permit tacking with existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 107295 (Sub-No. 333), filed March 16, 1970. Applicant: PRE-FAB TRANSIT CO., a corporation, 100 South Main Street, Post Office Box 146, Farmer City, Ill. 61842. Applicant's representative: Dale L. Cox (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime*, from points in Brown, Dodge, and Fond du Lac Counties, Wis., to points in Minnesota and Missouri. NOTE: Applicant states that the nature of the application does not permit tacking with existing authority. If a hearing is deemed necessary, applicant requests it be held at Milwaukee, or Madison, Wis.

No. MC 107295 (Sub-No. 334), filed March 16, 1970. Applicant: PRE-FAB TRANSIT CO., a corporation, 100 South Main Street, Farmer City, Ill. 61842. Applicant's representative: Dale L. Cox (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pallet racks, iron or steel, and accessories*, from Quincy and Rock Island, Ill., to points in the United States, except Alaska and Hawaii. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. It further states if possible duplication is discovered, it will be disclosed at the hearing. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 110393 (Sub-No. 27), filed March 16, 1970. Applicant: GEM TRANSPORT, INC., 1559 East 10th Street, Jeffersonville, Ind. 47130. Applicant's representative: Rudy Yessin, Sixth Floor, McClure Building, Frankfort, Ky. 40601. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* in vehicles equipped with mechanical refrigeration (except commodities in bulk, in tank vehicles), from Evansville, Washington, and Indianapolis, Ind., and Louisville, Ky., to points in Ohio, Pennsylvania, New York, New Jersey, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine, Delaware, Maryland, Virginia, West Virginia, District of Columbia, Michigan, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Louisiana, Wisconsin, Minnesota, and Illinois, under contract with Armour & Co. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky., or Washington, D.C.

No. MC 110988 (Sub-No. 251), filed March 9, 1970. Applicant: KAMPO TRANSIT, INC., 200 West Cecil Street,

Neenah, Wis. 54956. Applicant's representatives: David A. Peterson (same address as applicant), and E. Stephen Heisley, 666 Eleventh Street NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank, and hopper-type vehicles, from Otsego, Mich. to points in Illinois, Indiana, Ohio, Pennsylvania, and West Virginia. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Detroit, Mich.

No. MC 112520 (Sub-No. 213), filed March 17, 1970. Applicant: McKENZIE TANK LINES, INC., Post Office Box 1200, Tallahassee, Fla. 32302. Applicant's representative: W. Guy McKenzie, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, from points in Jackson County, Miss., and Decatur County, Ga., to points in Alabama, Florida, and Georgia. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 112582 (Sub-No. 32), filed March 18, 1970. Applicant: T. M. ZIMMERMAN COMPANY, a corporation, Post Office Box 380, Chambersburg, Pa. 17201. Applicant's representative: John M. Musselman, 400 North Third Street, Harrisburg, Pa. 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration (excluding commodities in bulk, in tank vehicles), from the plantsite and warehouse facilities of Stouffer Foods Corp., located at Cleveland and Solon, Ohio, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Vermont, Rhode Island, points in Pennsylvania east of U.S. Highway 15 and Washington, D.C. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Cleveland, Ohio, or Washington, D.C.

No. MC 115669 (Sub-No. 109), filed March 9, 1970. Applicant: HOWARD N. DAHLSTEN, doing business as DAHLSTEN TRUCK LINE, Post Office Box 95, Clay Center, Nebr. 68933. Applicant's representative: Donald L. Stern, 630 City National Bank Building, Omaha, Nebr. 68102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and dry fertilizer materials*, in bulk, in tank vehicles, from the plantsite of Cominco American, Inc., located 5 miles northwest of Beatrice, Nebr., to points in Iowa, Kansas, Minnesota, Missouri, and South Dakota. Restriction: The operations authorized herein are restricted to the transportation of traffic originating at the named plantsite and terminating at the destinations specified above. NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha or Lincoln, Nebr.

No. MC 116280 (Sub-No. 10), filed March 11, 1970. Applicant: W. C. McQUAIDE, INC., 153 Macridge Avenue, Johnstown, Pa. 15904. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, Pa. 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading), between Johnstown, Pa., on the one hand, and, on the other, points in Pennsylvania. Restriction: The above traffic limited to transportation having a prior of subsequent movement by rail or trailer on flatcar. NOTE: Applicant now holds contract carrier authority under its permit No. MC 88299, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Harrisburg or Johnstown, Pa.

No. MC 117765 (Sub-No. 98), filed March 9, 1970. Applicant: HAHN TRUCK LINE, INC., 5315 Northwest Fifth, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan, Post Office Box 75267, Oklahoma City, Okla. 73107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages* in containers and *advertising matter* when moving with malt beverages, from Belleville, Ill., to Woodward, Okla., Fort Worth, Tex.; to Bartlesville, McAlester, and Poteau, Okla., and St. Louis, Mo.; to Clinton and Woodward, Okla.; and (2) *salt and salt products and mineral feed mixtures*, in straight or mixed shipments, from points in Beckham, Greer, and Harmon Counties, Okla., to points in Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, and Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla.

No. MC 117991 (Sub-No. 2), filed March 19, 1970. Applicant: ZAVITZ BROTHERS, LTD., a corporation, Wainfleet, Ontario, Canada. Applicant's representative: Robert D. Gunderman, 43 Niagara Street, Buffalo, N.Y. 14202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Wilmington, Del., to ports of entry on the International Boundary line between the United States and Canada, located in New York. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Buffalo, N.Y.

No. MC 118561 (Sub-No. 14), filed March 12, 1970. Applicant: HERBERT B. FULLER, doing business as FULLER TRANSFER COMPANY, 212 East Street, Marysville, Tenn. 37801. Applicant's representative: Harold Seligman, 1704 Parkway Towers, Nashville, Tenn. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as defined in appendix I, sections A and C, to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except such commodities in bulk, in tank vehicles), from points in Davidson County, Tenn., to points in that part of Tennessee on and east of a line beginning at the Tennessee-Mississippi State line and extending along U.S. Highway 45 to junction U.S. Highway 45W, thence along U.S. Highway 45W to the Tennessee-Kentucky State line, and on and west of U.S. Highway 27; and to points in Trigg, Christian, Caldwell, Hopkins, McLean, Muhlenberg, Todd, Logan, Butler, Ohio, Grayson, Edmonson, Warren, Simpson, Allen, Hart, Barren, Monroe, Metcalfe, Cumberland, Green, Taylor, Adair, Russell, Clinton, Casey, and Wayne Counties, Ky.; and to points in Lauderdale, Limestone, Madison, Jackson, De Kalb, Lawrence, and Colbert Counties, Ala. NOTE: Applicant states it proposes to tack the authority sought herein in conjunction with its existing authority where such operations might be feasible. It does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Nashville or Knoxville, Tenn.

No. MC 118904 (Sub-No. 15), filed February 18, 1970. Applicant: MOBILE HOME EXPRESS, LTD., a corporation, 1915 F Avenue, Lawton, Okla. 73501. Applicant's representative: David D. Brunson, 419 Northwest Sixth Street, Oklahoma City, Okla. 73102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles in initial movements, from points in Pontotoc County, Okla., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla., or Dallas, Tex.

No. MC 119531 (Sub-No. 143), filed March 16, 1970. Applicant: DIECKBRADER EXPRESS, INC., 5391 Wooster Road, Cincinnati, Ohio 45226. Applicant's representative: Charles W. Singer, 33 North Dearborn Street, Suite 1625, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Cincinnati, Ohio, to points in Pennsylvania and Tennessee. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests

it be held at Chicago, Ill., or Washington, D.C.

No. MC 119657 (Sub-No. 8), filed March 13, 1970. Applicant: GEORGE TRANSIT LINE, INC., 760–764 Northeast 47th Place, Des Moines, Iowa 50313. Applicant's representative: Richard A. Miller, 212 Equitable Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Feed ingredients*, from Clinton, Iowa, to points in Illinois, Iowa, Minnesota, Missouri, Nebraska, and Wisconsin, (2) *fertilizer and fertilizer materials*, from Clinton, Iowa, to points in Illinois, Iowa, and Wisconsin and (3) *semi-trailers*, between Des Moines, Iowa, and Omaha, Nebr. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa.

No. MC 121318 (Sub-No. 9), filed March 16, 1970. Applicant: YOURGA TRUCKING, INC., 104 Church Street, Wheatland, Pa. 16161. Applicant's representative: Harold G. Hernly, 711 14th Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles and commodities* used in the production, assembly, and distribution of iron and steel articles, between Sharon and Wheatland, Pa., on the one hand, and, on the other, points in New York and New Jersey. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Sharon or Pittsburgh, Pa.

No. MC 123639 (Sub-No. 127), filed March 5, 1970. Applicant: J. B. MONTGOMERY, INC., 5150 Brighton Boulevard, Denver, Colo. 80216. Applicant's representative: David Senseney, 3395 South Bannock, Englewood, Colo. 80110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, dairy products, and articles* distributed by meat packinghouses as defined in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Scottsbluff and Gering, Nebr., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, restricted against tacking at Scottsbluff or Gering, Nebr. NOTE: If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 123681 (Sub-No. 17), filed March 3, 1970. Applicant: WIDING TRANSPORTATION, INC., Post Office Box 03159, Portland, Oreg. 97203. Applicant's representative: Earle V. White, 2400 Southwest Fourth Avenue, Portland, Oreg. 97201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities* which, by reason of size or weight, require special handling or the use of special equipment, and *commodities* which do not require special handling or the use of special equipment when moving in the same shipment on the same bill of lading as commodities which by reason of size or weight require special handling or the use of special equipment; and (2) *self propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith; between points in Oregon and Washington, on the one hand, and, on the other, points in Utah and Montana. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states that no duplicating authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg., and Salt Lake City, Utah.

No. MC 128053 (Sub-No. 4), filed March 12, 1970. Applicant: MIDWEST TRUCKING, INC., Post Office Box 166, Billings, Mont. 59103. Applicant's representative: J. F. Meglen, Post Office Box 1581, Billings, Mont. 59103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beer*, from La Crosse, Wis., to points in Montana. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Billings, Mont.

No. MC 128235 (Sub-No. 5), filed March 10, 1970. Applicant: ALVIN JOHNSON, Hinckley, Minn. 55037. Applicant's representative: Earl Hacking, 503 11th Avenue South, Minneapolis, Minn. 55415. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from Sheboygan, and La Crosse, Wis., to Rush City, Minn. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, or St. Paul, Minn.

No. MC 128339 (Sub-No. 1), filed February 26, 1970. Applicant: REGISTER VAN AND STORAGE COMPANY, INC., 1317 Jacqueline Drive, Post Office Box 5568, Columbus, Ga. 31906. Applicant's representative: C. E. Walker, 306 First National Bank Building, No. 8 11th Street (East), Post Office Box 1085, Columbus, Ga. 31902. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except commodities in bulk, between Eufaula, and Phenix City, Ala., over U.S. Highway 431 and alternate Alabama Highway 165, and return over the same route serving no intermediate or off-route points. NOTE: This instant application is an extension of operations from Phenix City to Eufaula, Ala., in connection with applicant's present authority, permitting through movements between Columbus, Ga., and Eufaula, Ala. If a hearing is deemed necessary, applicant requests it be held at Eufaula, Ala., or Columbus, Ga.

No. MC 129631 (Sub-No. 12), filed March 9, 1970. Applicant: PACK TRANSPORT, INC., Post Office Box 17233, Salt Lake City, Utah 84117. Applicant's representative: Gwyn D. Davidson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products and forest products*; (1) from points in Idaho and Montana, to Summit County, Utah; (2) from points in Montana (except Missoula and Ravalli Counties), to points in Idaho; and (3) from points in Idaho (other than Franklin and Oneida Counties) to Franklin and Oneida Counties, Idaho. NOTE: Applicant states tacking possibilities with (2) above, but indicates that it has no present intention to tack and therefore, does not identify the points or territories which can be served through tacking. Applicant further states in (1) and (2) it does not intend to tack. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 129645 (Sub-No. 18), filed March 9, 1970. Applicant: BASIL J. SMEESTER AND JOSEPH G. SMEESTER, a partnership, doing business as SMEESTER BROTHERS TRUCKING COMPANY, 1330 South Jackson Street, Iron Mountain, Mich. 59801. Applicant's representative: Robert M. Pearce, Post Office Box E, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wood fiberboard, wood fiberboard* faced or finished with decorative and/or protective *material and accessories and supplies* used in the installation thereof, from the plant and warehouse sites of Evans Products Co. at or near Phillips, Wis., to points in Arkansas, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia; and (2) *materials, equipment, and supplies* used in the manufacture or distribution of the commodities described in (1) above from the destination States named to the plant and warehouse sites of Evans Products Co. at or near Phillips, Wis. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant holds contract authority under MC 127093 Sub 2, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn.

No. MC 133445 (Sub-No. 3), filed March 9, 1970. Applicant: GERALD T. STUCK, 414 East Main Street, Middleburg, Pa. 17842. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, Pa. 17101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Semitrailers, semitrailer chassis, motor vehicle bodies, and containers*, between the plantsite of Trailco

Manufacturing Sales Co., at Hummels Wharf, Pa., on the one hand, and, on the other, points in Connecticut, Illinois, Kentucky, Massachusetts, Michigan, North Carolina, Rhode Island, and Tennessee, under contract with Trailco Manufacturing & Sales Co., Hummels Wharf, Pa. NOTE: If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa., or Washington, D.C.

No. MC 134121 (Sub-No. 2), filed March 4, 1970. Applicant: CHARLES DEASON and FRANK DEASON, a Partnership, doing business as DEASON BROTHERS, Post Office Box 368, Lewisburg, Tenn. 37091. Applicant's representative: Robert H. Cowan, 500 Court Square Building, Nashville, Tenn. 37201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Packaged animal feed blocks*, from Pulaski, Tenn., to points in Kentucky and Ohio, under a continuing contract with McInnis Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn.

No. MC 134145 (Sub-No. 1), filed March 9, 1970. Applicant: NORTH STAR TRANSPORT, INC., Post Office Box 51, Thief River Falls, Minn. 56751. Applicant's representative: Robert P. Sack, Post Office Box 6010, West St. Paul, Minn. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Snowmobiles, boats, motor bikes, and racing vehicles*, from Roseau, Thief River Falls, Karlstad, and Minneapolis, Minn., and Afton, Wyo., to points in the United States (except Hawaii) and to ports of entry on the international boundary line between the United States and Canada in Maine, Michigan, Minnesota, New York, North Dakota, and Vermont, and (2) *materials, suplies and equipment* used in the manufacture of the above described commodities, from points in California, Colorado, Connecticut, Idaho, Iowa, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Washington, and Wisconsin, to Roseau, Thief River Falls, Karlstad, and Minneapolis, Minn., and Afton, Wyo., under contract with Polaris Industries, Inc., Roseau, Minn., and and Arctic Enterprises, Inc., Thief River Falls, Minn. NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis or Duluth, Minn.

No. MC 134195 (Sub-No. 1) (clarification), filed February 13, 1970, published in the FEDERAL REGISTER issue of March 12, 1970, and republished, as clarified, this issue. Applicant: C. H. B. GRAIN CO., INC., 116 Ruhlin Court, Post Office Box 21, El Paso, Tex. 79940. Applicant's representative: M. Ward Bailey, 2412 Continental Life Building, Fort Worth, Tex. 76102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Animal feeds* and *foodstuffs*, in bulk, between El Paso, Tex., on the one hand, and, on the other, Albuquerque, N. Mex., under contract with Price's El Paso Dairy, a division of Price's Producers, Inc. NOTE: The purpose of this republication is to show *and* in the commodity description in lieu of aid as previously published. If a hearing is deemed necessary, applicant requests it be held at El Paso, Tex., or Albuquerque, N. Mex.

No. MC 134419, filed February 19, 1970. Applicant: TLT COMPANY, INC., 4792 Fifth Avenue Extension, Youngstown, Ohio 44505. Applicant's representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Transformers and transformer parts; materials, equipment, and supplies* used in the production, distribution or sale of transformers, between Warren, Ohio; Elgin, Ill.; High Springs, Fla.; and Belzoni, Miss., on the one hand, and, on the other, points in Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Wisconsin; and (2) *air compressors and air compressor parts; materials, equipment, and supplies* used in the production, distribution or sale of air compressors, between Princeton, Ill., and Belzoni, Miss., on the one hand, and, on the other, points in Colorado, Illinois, Indiana, Louisiana, Mississippi, Missouri, North Carolina, Ohio, Oregon, South Carolina, Texas, and Wisconsin; and (3) *boat trailers, transformer parts, water pollution control equipment; materials, equipment, and supplies* used in the production, distribution or sale of boat trailers, transformer parts and water pollution control equipment, between Salem, Ohio on the one hand, and, on the other, points in Florida, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, West Virginia, and Wisconsin, under continuing contracts with Standard Transformer Co., a division of American Gage & Machine Co., at to (1) above; under contract with Champion Pneumatic Machinery Co., at to (2) above; and under contract with Sterling-Salem Corp. as to (3) above. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Cleveland, Ohio.

No. MC 134428, filed March 16, 1970. Applicant: WALTER PULLEY, doing business as PULLEY BULK TRANSPORT, 9 Zephry Avenue, Westfield, Mass. 01085. Applicant's representative: Thomas W. Murett, 342 North Main Street, West Hartford, Conn. 06117. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flour*, in bulk, between points in Connecticut, Massachusetts, and Rhode Island, restricted to shipments having immediately prior movement by rail. NOTE: Applicant states that it does not intend to tack. If a hearing is deemed necessary, applicant requests it be held at Buffalo, N.Y., or Hartford, Conn.

MOTOR CARRIER OF PASSENGER

No. MC 29601 (Sub-No. 10), filed March 9, 1970. Applicant: MIDWEST COACHES, INC., 216 North Second Street, Mankato, Minn. 56001. Applicant's representative: William E. Fox, 860 Northwestern Bank Building, Minneapolis, Minn. 55402. Authority sought to operate section 1042.1 (Superhighway rules), as a *common carrier*, by motor vehicle, over regular routes, transporting:. *Passengers and their baggage, and express, mail and newspapers*, in the same vehicle with passengers, between Worthington, Minn., and Sioux Falls, S. Dak., from Worthington over U.S. Highway 59 to its junction with Interstate Highway 90, thence over Interstate Highway 90 to its junction with Minnesota Highway 91, thence over Minnesota Highway 91 to Adrian, thence return over Minnesota Highway 91 to its junction with Interstate Highway 90, thence over Interstate Highway 90 to its junction with U.S. Highway 75, thence over U.S. Highway 75 to Luverne, thence return over U.S. Highway 75 to its junction with Interstate Highway 90, thence over Interstate Highway 90 to its junction with U.S. Highway 77, thence over U.S. Highway 77 to Sioux Falls, and return over the same route, serving the intermediate points of Adrian and Luverne, Minn., in connection with applicant's presently authorized operation between Worthington, Minn., and Sioux Falls, S. Dak. NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 70-4258; Filed, Apr. 8, 1970; 8:45 a.m.]

[Notice 519]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 6, 1970.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-71892. By order of April 2, 1970, the Motor Carrier Board approved the transfer to Sorensen Transportation Co., Inc., Bethany, Conn., of that portion of the operating rights in certificate No.

MC–127747 (Sub-No. 1) issued April 19, 1968, to Starlite Delivery Service, Inc., Bayonne, N.J., authorizing the transportation of coffee, between Hoboken, N.J., and Lansdowne, Pa., serving no intermediate points; and between Hoboken, N.J., and Baltimore, Md., serving no intermediate points, and printed and advertising matter, between New York, N.Y., and Washington, D.C., serving the intermediate point of Hoboken, N.J., only in connection with service to and from Washington, D.C. Thomas W. Murrett, 342 North Main Street, West Hartford, Conn. 06117, attorney for applicants.

No. MC–FC–71922. By order of March 31, 1970, the Motor Carrier Board approved the transfer to Annunziato DeGeorge, doing business as A. D. George, Berwick, Pa., of the operating rights in certificates Nos. MC–60170 and MC–60170 (Sub-No. 6) issued June 10, 1949, and December 13, 1966, respectively to Leonarda C. George, doing business as A. D. George, Berwick, Pa., authorizing the transportation of coal, from Scranton, Plymouth, and Nanticoke, Pa., to Jersey City and Garwood, N.J.; lumber, from Wilmington, Del., and Newark, N.J., to Berwick, Pa.; household goods, between Berwick, Pa., and points within 20 miles thereof, on the one hand, and, on the other, points in New York, Delaware, Maryland, Ohio, and Connecticut, and Washington, D.C.; new machinery, castings and steel, between Berwick, Pa., on the one hand, and, on the other, New York, N.Y., Camden, N.J., and points within 15 miles of Newark, N.J., and household goods, between Wilkes-Barre, Pa., and points within 10 miles thereof, on the one hand, and, on the other, points in New York, New Jersey, Connecticut, Indiana, Ohio, Maryland, Delaware, West Virginia, and the District of Columbia. Joseph F. Torsella, 19–A West Front Street, Berwick, Pa. 18603, attorney for applicants.

No. MC–FC–71925. By order of March 31, 1970, the Motor Carrier Board approved the transfer to Pat's Towing Service, Inc., Cambridge, Mass., of the operating rights in certificate No. MC–116866 issued September 16, 1968, to Patrick J. Spinetto and Abraham J. Spinetto, a partnership, doing business as Pat's Towing Service, Cambridge, Mass., authorizing the transportation of wrecked, disabled and repossessed motor vehicles (except trailers designed to be drawn by passenger automobiles), in truckaway service requiring the use of wrecker equipment, between points in Suffolk and Middlesex Counties, Mass., on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Rhode Island, and Connecticut. Bernard Goldberg, 634 Massachusetts Avenue, Cambridge, Mass. 02139, attorney for applicants.

No. MC–FC–71968. By order of March 31, 1970, the Motor Carrier Board approved the transfer to Delaware Valley Delivery Services, Inc., Trenton, N.J., of the operating rights in permit No. MC–101378 issued April 3, 1961, to Fred John Cooper, doing business as Speedy Delivery Service, Hamilton Square, N.J., authorizing the transportation of such merchandise as is dealt in by retail department stores, the business of which is the sale of general commodities, from Trenton, N.J., to points in Pennsylvania within 35 miles of Trenton (except Philadelphia), and rejected or defective merchandise owned by persons who operate such stores, from points in Pennsylvania within 35 miles of Trenton, N.J. (except Philadelphia, Pa.), to Trenton, N.J. Paul G. Levy, 143 East State Street, Room 505, Trenton, N.J. 08608, attorney for applicants.

No. MC–FC–72023. By order of March 30, 1970, the Motor Carrier Board approved the transfer to Pier Service Trucking Corp., Brooklyn, N.Y., of the operating rights in permit No. MC–129983 issued February 14, 1969, to Pier Air Cargo Trucking, Inc., Brooklyn, N.Y., authorizing the transportation of such merchandise as is dealt in by a wholesale dealer in athletic goods, between points in New York, N.Y. harbors and harbors contiguous thereto, as defined in 49 CFR 1070.1 on the one hand, and, on the other, Suffern, N.Y. Bert Collins, Registered Practitioner, 140 Cedar Street, New York, N.Y. 10006, practitioner for applicants.

No. MC–FC–72057. By order of April 1, 1970, the Motor Carrier Board approved the transfer to Provisioners Frozen Express, Inc., Seattle, Wash., of certificate No. MC–117589 and subs thereunder issued to Clark's Frozen Express Inc., Seattle, Wash., authorizing the transportation of: General commodities, with the usual exceptions, and the transportation of specifically named commodities, between points in Washington, Idaho, and Oregon. George R. LaBissoniere, attorney, 1424 Washington Building, Seattle, Wash. 98101.

No. MC–FC–72060. By order of March 31, 1970, the Motor Carrier Board approved the transfer to Joseph S. Genova, doing business as Genova Express Lines, Williamstown, N.J., of the operating rights in certificate No. MC–381 issued October 7, 1966, to Scott Motor Express, Inc., Hammonton, N.J., authorizing the transportation of general commodities, with the usual exceptions, between Philadelphia, Pa., and Williamstown, N.J., serving all intermediate points and the off-route points of Almonesson and Sicklerville, N.J., and between Hammonton, N.J., and Philadelphia, Pa., serving all intermediate points and the off-route points within 5 miles of Hammonton, over specified regular routes. George A. Olsen, Registered Practitioner, 69 Tonnele Avenue, Jersey City, N.J. 07306, representative for applicants.

No. MC–FC–72063. By order of April 2, 1970, the Motor Carrier Board approved the transfer to Doepp Crockett Hauling, Inc., Dexter, N. Mex., of the operating rights in certificate No. MC–133029 (Sub-No. 2) issued February 19, 1970, to Doepp Crockett, doing business as Doepp Crockett—Hauling, Dexter, N. Mex., authorizing the transportation, over irregular routes, of wire from Pueblo, Colo., to points in Chaves and Curry Counties, N. Mex., and points in Ochiltree, Dawson, Martin, and Wheeler Counties, Tex. Joseph F. Baca, 311 Sixth Street NW., Post Office Box 465, Albuquerque, N. Mex. 87103, attorney for applicants.

No. MC–FC–72064. By order of April 1, 1970, the Motor Carrier Board approved the transfer to W. M. Bledsoe and Sons, Inc., Mexico, Mo., of the operating rights in certificate No. MC–126323 (Sub-No. 2) issued March 17, 1965, to W. M. Bledsoe, doing business as W. M. Bledsoe Mining Co., Mexico, Mo., authorizing the transportation of fire clay, in bulk, in dump vehicles, from points in Audrain, Montgomery, Warren, Gasconade, Osage, and Callaway Counties, Mo., to the site of the Western Division, of A. P. Green Fire Brick Co., Madison County, Ill. Jerome W. Seigfreid, 123 East Jackson Street, Mexico, Mo. 65265, attorney for applicants.

No. MC–FC–72065. By order of April 1, 1970, the Motor Carrier Board approved the transfer to Black & White Transfer Co., a corporation, Oklahoma City, Okla., of certificate No. MC–116402 (Sub-No. 1) issued to R. C. Meyers, doing business as Meyers Transfer and Storage Co., Magnolia, Ark., authorizing the transportation of household goods, as defined by the Commission, between points in Columbia County, Ark., on the one hand, and, on the other, points in Louisiana and Texas. Rufus H. Lawson, Attorney at Law, Post Office Box 75124, Oklahoma City, Okla. 73107.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 70–4353; Filed, Apr. 8, 1970; 8:51 a.m.]

FOURTH SECTION APPLICATION FOR RELIEF

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41931—*Feed or feed ingredients between points in southwestern territory and points in IFA and WTL territories.* Filed by Southwestern Freight Bureau, agent (No. B–151), for interested rail carriers. Rates on feed or feed ingredients, animal or poultry, viz.: sugar, crude, denatured, with not to exceed 10 percent clay, not suitable for human consumption, in packages or in bulk, minimum 60,000 pounds, in carloads, between points in southwestern territory, including Mississippi River crossings, Memphis, Tenn., and south; also between points in southwestern territory, on the one hand, and points in Illinois Freight Association and western trunkline territories, on the other.

Grounds for relief—New commodity description, short-line distance formula and grouping.

Tariffs—Supplements 62 and 23 to Southwestern Freight Bureau, agent, tariffs ICC 4819 and 4883, respectively.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 70-4354; Filed, Apr. 8, 1970; 8:51 a.m.]

[S.O. 994; ICC Order 44]

CHESAPEAKE & OHIO RAILWAY CO.

Rerouting or Diversion of Traffic

In the opinion of R. D. Pfahler, agent, The Chesapeake & Ohio Railway Co. is unable to transport traffic over its lines in the Buffalo, N.Y., area because of operating problems.

It is ordered, That:

(a) The Chesapeake & Ohio Railway Co., being unable to transport traffic over its lines in the Buffalo, N.Y., area because of operating problems, is hereby authorized to reroute and divert such traffic over The Baltimore & Ohio Railroad Co., via any available junctions, to expedite the movement.

(b) Concurrence of receiving road to be obtained: The Chesapeake & Ohio Railway Co. shall receive the concurrence of The Baltimore & Ohio Railroad Co. before the rerouting or diversion is ordered.

(c) Notification to shippers: Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:01 a.m., April 5, 1970.

(g) *Expiration date.* This order shall expire at 11:59 p.m., April 26, 1970, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 3, 1970.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[F.R. Doc. 70-4352; Filed, Apr. 8, 1970; 8:51 a.m.]

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FEDERAL REGISTER

VOLUME 35 • NUMBER 69

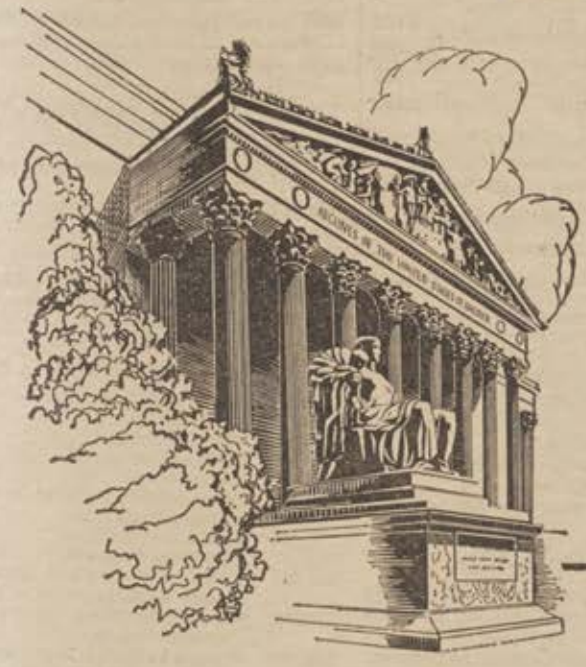
Thursday, April 9, 1970 • Washington, D.C.

PART II

DEPARTMENT OF LABOR

Wage and Hour Division

The Fair Labor Standards Act as Applied to Retailers of Goods or Services



Title 29—LABOR

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SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 779—THE FAIR LABOR STANDARDS ACT AS APPLIED TO RETAILERS OF GOODS OR SERVICES

Part 779 of Title 29 of the Code of Federal Regulations is hereby revised as set forth below in order to adapt it to the changes made by the Fair Labor Standards Amendments of 1966 (80 Stat. 830) in the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and in order to include such new and additional interpretations of the law as amended and such modifications of prior interpretations as are deemed necessary to conform the text of this part to the present provisions of the act, as amended, and to set forth therein more fully the principles by which the Secretary and the Administrator are guided in interpreting and applying these provisions in the light of their legislative history and the pertinent judicial decisions and administrative interpretations and opinions rendered since this part was last revised.

The administrative procedure provisions of 5 U.S.C. 553 which require notice of proposed rule making, opportunity for public participation, and delay in effective date are not applicable because these are interpretative rules. I do not believe such procedures will serve a useful purpose here. Accordingly, this amendment revising Part 779 shall become effective immediately.

The revised 29 CFR Part 779 reads as follows:

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INTERSTATE INFLOW TEST UNDER PRIOR ACT

AUTHORITY: The provisions of this Part 779 issued under secs. 1-19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201-219.

Subpart A—General

INTRODUCTORY

§ 779.0 Purpose of interpretative bulletin.

It is the purpose of this part to provide an official statement of the views of the Department of Labor with respect to the application and meaning of those provisions of the Fair Labor Standards Act, hereinafter referred to as the Act, which govern rights and obligations of employees and employers in the various enterprises in which retail sales of goods or services are made. The application of the Act to employment in such enterprises was greatly broadened by amendments effective September 3, 1961. The Act's application was extended to employment in additional retail and service enterprises by the Fair Labor Standards Amendments of 1966, effective February 1, 1967. Under the amended Act, there are many employees employed by retail or service establishments and in enterprises having such establishments engaged in the retail selling of goods or services who must be employed in compliance with its provisions. It is an objective of this part to make available in one place, for the guidance of those who may be concerned with the provisions of the law, the official interpretations of these provisions by which the Department of Labor will be guided in carrying out its responsibilities under the Act.

§ 779.1 General scope of the Act.

The Fair Labor Standards Act of 1938, as amended, is a Federal statute of general application which establishes minimum wage, maximum hours, overtime pay, equal pay, and child labor requirements that apply as provided in the Act. Employers and employees in enterprises in which retail sales of goods or services are made need to know how the Act applies to employment in these enterprises so that they may understand their rights and obligations under the law. All employees whose employment has the relationship to interstate or foreign commerce which the Act specifies are subject to the prescribed labor standards unless specifically exempted from them. Employers having such employees are required to comply with the Act's provisions in this regard and with specified recordkeeping requirements contained in Part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid minimum wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

§ 779.2 Previous and new coverage.

Under the Act as amended in 1966, an employer may have some employees subject to its minimum wage, maximum hours, overtime pay, equal pay, or child labor provisions who would be covered by such provisions under the prior law even if the amendments had not been enacted, and other employees whose coverage under such provisions was provided for the first time by the 1968 amendments. As explained in Subparts B and C such provisions of the amended Act may apply to an employee by reason of the activities in which he is individually engaged, or because he is employed in an enterprise whose activities satisfy the conditions prescribed in the law prior to the amendments. On the other hand, such provisions of the amended Act may apply to an employee solely because he is employed in an enterprise whose activities satisfy only the conditions provided in the Act as it was amended in 1966. Previously covered employment in retail and service enterprise is subject to different monetary standards than newly covered employment in such enterprises until February 1, 1971. On and after that date, every such employee subject to the minimum wage provisions will be entitled to not less than $1.60 an hour. However, beginning February 1, 1969, every such employee subject to the overtime provisions is entitled to overtime pay for all hours worked in excess of 40 in a workweek at a rate not less than one and one-half times his regular rate of pay. During the period for which different minimum wage provisions were made applicable, beginning with the effective date of the 1966 amendments on February 1, 1967, and ending on January 31, 1971, a lower minimum wage rate is authorized for employees in employment brought under the minimum wage provisions of the Act for the first time by the amendments than for those subject to the minimum wage provisions under the prior Act. Also, in the period beginning with the effective date of the amendments and ending on January 31, 1969, employees in employment brought under the overtime pay provisions for the first time by the amendments could be employed for a longer workweek without overtime pay, as specified in the Act. Accordingly, employers who do not wish to pay all covered employees for employment during such periods the minimum wages and overtime pay required for employment covered under the prior provisions will need to identify those employees who are covered under the prior provisions and those who are covered under the new provisions when wages are computed and paid under the Act.

§ 779.3 Pay standards for employees subject to previous coverage of the Act.

Before the 1966 amendments, the Act applied, as it still applies, to employees individually engaged in interstate or foreign commerce or in the production of goods for such commerce, and to employees in certain enterprises, including enterprises in which retail sales of goods or services are made. The tests by which coverage based on the employee's individual activities is determined were not changed by the 1966 amendments and are described in Suppart B of this part. An employee in an enterprise whose activities satisfy the conditions prescribed in the law prior to the 1966 amendments (discussed in Subpart C) is covered under the present Act. Any employee whose employment satisfies the tests by which individual or enterprise coverage is determined under the Act prior to the 1966 amendments and who would not have come within some exemption in the law prior to the amendments is subject to the monetary provisions prescribed in the law for previously covered employees and is entitled to a minimum wage of at least $1.40 an hour beginning February 1, 1967, and not less than $1.60 an hour beginning February 1, 1968, unless expressly exempted by some provision of the amended Act. (In each instance where there is an increase in the minimum wage, the new minimum wage rate becomes effective 12:01 a.m., on the date indicated.) Such an employee is also entitled to overtime pay for hours worked in excess of 40 in any workweek at a rate not less than one and one-half times his regular rate of pay. (Minimum wage rates in Puerto Rico, the Virgin Islands, and American Samoa are governed by special provisions of the Act. Information on these rates is available at any office of the Wage and Hour Division.)

§ 779.4 Pay standards for newly covered employment.

There are many employees of retailers as well as other employees who would not be subject to the minimum wage or overtime pay provisions of the Act as it was prior to the 1966 amendments, either because of their individual activities or because of the activities of the enterprise in which they are employed, but who are brought under the minimum wage or overtime provisions, or both, for the first time by the changed enterprise coverage provisions or changes in exemptions, or both, which were enacted as part of the amendments and made effective February 1, 1967. The following pay standards apply to this newly covered employment, unless a specific exemption has been retained or provided in the amendments; such employees must be paid not less than the minimum wages for hours worked and not less than one and one-half times their regular rates of pay for overtime, as shown in the following schedule:

Minimum wage	*Beginning*
$1.00 an hour	February 1, 1967.
$1.15 an hour	February 1, 1968.
$1.30 an hour	February 1, 1969.
$1.45 an hour	February 1, 1970.
$1.60 an hour	February 1, 1971 and thereafter.

In each instance where there is an increase in the minimum wage, the new minimum wage rate becomes effective 12:01 a.m., on the date indicated. (Minimum wage rates for newly covered employees in Puerto Rico, the Virgin Islands, and American Samoa are set by wage order under special industry committee procedures. Information on these rates and their effective dates may be obtained at any office of the Wage and Hour Division.)

Overtime pay	*Beginning*
After 44 hours in a workweek	February 1, 1967.
After 42 hours in a workweek	February 1, 1968.
After 40 hours in a workweek	February 1, 1969 and thereafter.

In each instance where a new overtime pay standard is applicable, it shall be effective as to any workweek beginning on or after the date indicated.

§ 779.5 Matters discussed in this part.

This part discusses generally the provisions of the Act which govern its application to employers and employees in enterprises and establishments that make retail sales of goods or services. It discusses in some detail those provisions of the Act which refer specifically to such employers and employees and such enterprises or establishments. The criteria for determining the employments in which these employers and employees may be subject to the law are discussed in Subparts B and C of this part and the criteria for exclusion from its provisions under specific exemptions are discussed in Subpart D of this part. Other provisions of special interest to retailers and their employees are discussed in Subparts E and F of this part.

§ 779.6 Matters discussed in other interpretative bulletins.

Bulletins having general application to others subject to the law as well as to retailers and their employees have been issued on a number of subjects of general interest. These will be found in other parts of this chapter of the Code of Federal Regulations. Reference should be made to them for guidance on matters which they discuss in detail and which this part does not undertake to do. They include Part 776 of this chapter, discussing general coverage, including the employer-employee relationship under the Act; Part 531 of this chapter, discussing methods of payment of wages; Part 778 of this chapter, discussing computation and payment of overtime compensation; Part 785 of this chapter, discussing the calculation of hours worked; and Part 800 of this chapter, discussing equal pay for equal work.

INTERPRETATIONS OF THE LAW

§ 779.7 Significance of official interpretations.

The regulations in this part contain the official interpretations of the Department of Labor with respect to the application under described circumstances of the provisions of law which they discuss. These interpretations indicate the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect.

§ 779.8 Basic support for interpretations.

The ultimate decisions on interpretations of the Act are made by the courts (Mitchell v. Zachry, 362 U.S. 310; Kirschbaum v. Walling, 316 U.S. 517). Court decisions supporting interpretations contained in this bulletin are cited where it is believed they may be helpful. On matters which have not been determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (Skidmore v. Swift, 323 U.S. 134). In order that these positions may be made known to persons who may be affected by them, official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (Reorg. Pl. 6 of 1950, 64 Stat. 1263; Gen. Ord. 45A, May 24, 1950; 15 F.R. 3290). As included in the regulations in this part, these interpretations are believed to express the intent of the law as reflected in its provisions and as construed by the courts and evidenced by its legislative history. References to pertinent legislative history are made in this part where it appears that they will contribute to a better understanding of the interpretations.

§ 779.9 Reliance on interpretations.

The interpretations of the law contained in this part are official interpretations which may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947. In addition, the Supreme Court has recognized that such interpretations of this Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." Further, as stated by the Court: "Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons." (Skidmore v. Swift, 323 U.S. 134.) Some of the interpretations in Subpart D of this part relating to the scope of the exemption provided for retail or service establishments are interpretations of this exemption as it appeared in the original Act before amendment in 1949 and 1961, which have remained unchanged because they were consistent with the amendments. These interpretations may be said to have Congressional sanction because "When Congress amended the Act in 1949 it provided that pre-1949 rulings and interpretations by the Administrator should remain in

effect unless inconsistent with the statute as amended. 63 Stat. 920." (Mitchell v. Kentucky Finance Co., 359 U.S. 290.)

§ 779.10 Interpretations made, continued, and superseded by this part.

On and after publication of this part in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded, or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as Part 779 of this chapter. Prior opinions, rulings and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended by the Fair Labor Standards Amendments of 1961 are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequently arise. They do not and cannot refer specifically to every problem which may be met by retailers in the application of the Act. The omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210, or to any Regional or District Office of the Division.

SOME BASIC DEFINITIONS

§ 779.11 General statement.

The meaning and application of the provisions of law discussed in this part depend in large degree on the definitions of terms used in these provisions. The Act itself defines some of these terms. Others have been defined and construed in decisions of the courts. In the following sections some of these basic definitions are set forth for ready reference in connection with the part's discussion of the various provisions in which they appear. Some of these definitions and their application are considered in detail in other interpretative bulletins. The application of the others is considered in the sections of this part where the particular provisions containing the defined terms are discussed.

§ 779.12 Commerce.

"Commerce" as used in the Act includes interstate and foreign commerce. It is defined in section 3(b) of the Act to mean "trade, commerce, transportation, transmission or communication among the several States or between any State and any place outside thereof." (For the definition of "State" see § 779.16.) The application of this definition and the kinds of activities which it includes are discussed at length in the interpretative bulletin on general coverage of the Act, Part 776 of this chapter.

§ 779.13 Production.

To understand the meaning of "production" of goods for commerce as used in the Act it is necessary to refer to the definition in section 3(j) of the term "produced". A detailed discussion of the application of the term as defined is contained in the interpretative bulletin on general coverage of the Act, Part 776 of this chapter. Section 3(j) provides that "produced" as used in the Act "means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State." (For the definition of "State", see § 779.16.)

§ 779.14 Goods.

The definition in section 3(i) of the Act states that "goods", as used in the Act, means "goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof." The interpretative bulletin on general coverage of the Act, Part 776 of this chapter, contains a detailed discussion of the application of this definition and what is included in it.

§ 779.15 Sale and resale.

(a) Section 3(k) of the Act provides that "sale" or "sell", as used in the Act, "includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition." Since "goods", as defined, includes any part or ingredient of goods (see § 779.14), a "resale" of goods includes their sale in a different form than when first purchased or sold, such as the sale of goods of which they have become a component part (Arnold v. Kanowsky, 361 U.S. 388). The Act, in section 3(n), provides one exception to this rule by declaring that "resale", as used in the Act, "shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry." A resale of goods is not confined to resale of the goods as such, but under section 3(k) may include an "other disposition" of the goods in which they are disposed of in a transaction of a different kind; thus the sale by a restaurant to an airline of prepared meals to be served in flight to passengers whose tickets entitle them to a "complimentary" meal is a sale of goods "for resale". (Mitchell v. Sherry Corine Corp., 264 F. 2d 831 (C.A. 4), cert. denied 360 U.S. 934.)

(b) In construing section 3(s)(1) of the Act as it was prior to the 1966 amendments it should be noted that section 3(n) of the prior Act defined "resale" by declaring that this term, "except as used in subsection (s)(1), shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry." Thus, although section 3(n) of the prior Act also provided the one exception to the meaning of "resale", it made clear that the exception was inapplicable in determining under section 3(s)(1) of the prior Act, "if such enterprise purchases or receives goods for resale that move or have moved across State lines (not in deliveries from the reselling establishment) which amount in total volume to $250,000 or more". The application of the inflow test under section 3(s)(1) of the prior Act is discussed fully in Subpart C of this part.

§ 779.16 State.

As used in the Act, "State" means "any State of the United States or the District of Columbia or any Territory or possession of the United States" (Act, section 3(c)). The application of this definition in determining questions of coverage under the Act's definition of "commerce" and "produced" (see §§ 779.12, 779.13) is discussed in the interpretative bulletin on general coverage, Part 776 of this chapter. This definition is also important in determining whether goods "for resale" purchased or received by an enterprise move or have moved across State lines within the meaning of former section 3(s)(1) of the Act (prior to the 1966 amendments) and whether sales of goods or services are "made within the State" within the meaning of the retail or service establishment exemption in section 13(a)(2), as discussed in Subpart D of this part.

§ 779.17 Wage and wage payments to tipped employees.

Section 3(m) of the Act provides that, as used in the Act, "wage" paid to any employee:

"includes the reasonable cost, as determined by the Secretary of Labor, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid

to any employee. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount."

As explained in Part 531 of this chapter, section 3(m) of the Act governs the payment of wages required by the Act, including payment in other than cash and in tips. Part 531 of this chapter contains the regulations under which the reasonable cost or fair value of such facilities furnished may be computed for inclusion as part of wages required by the Act. Section 3(m) provides a method for determining the wage of a "tipped employee" and this term as defined in section 3(t) of the Act "means any employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips". Regulations under which wage credits are permitted on account of tips paid to "tipped employees" are also contained in Part 531 of this chapter.

§ 779.18 Regular rate.

As explained in the interpretative bulletin on overtime compensation, Part 778 of this chapter, employees subject to the overtime pay provisions of the Act must generally receive for their overtime work in any workweek as provided in the Act not less than one and one-half times their regular rates of pay. Section 7(e) of the Act defines "regular rate" in the following language:

(e) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include

(1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor set forth in appropriate regulation which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs;

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or

(7) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding 8 hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a)), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek.

This definition, which is discussed at length in Part 778 of this chapter, also governs the computation of "regular rate" for purposes of the special overtime exemption of certain commission employees of retail or service establishments which is contained in section 7(i) of the Act and is discussed in Subpart E of this part.

§ 779.19 Employer, employee, and employ.

The Act's major provisions impose certain requirements and prohibitions on every "employer" subject to their terms. The employment by an "employer" of an "employee" is, to the extent specified in the Act, made subject to minimum wage and overtime pay requirements and to prohibitions against the employment of oppressive child labor. The Act provides its own definitions of "employer", "employee", and "employ", under which "economic reality" rather than "technical concepts" determines whether there is employment subject to its terms (Goldberg v. Whitaker House Cooperative, 366 U.S. 28; United States v. Silk, 331 U.S. 704; Rutherford Food Corp. v. McComb, 331 U.S. 722). An "employer", as defined in section 3(d) of the Act, "includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State (except with respect to employees of a State or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in the last sentence of subsection (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence), or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization". An "employee", as defined in section 3(e) of the Act, "includes any individual employed by an employer" (except that the term is further qualified for purposes of counting man-days of employment by an employer in agriculture). "Employ", as used in the Act, is defined in section 3(g) to include "to suffer or permit to work". It should be noted, as explained in the interpretative bulletin on general coverage, Part 776 of this chapter, that in appropriate circumstances two or more employers may be jointly responsible for compliance with the statutory requirements applicable to employment of a particular employee. It should also be noted that "employer", "enterprise", and "establishment" are not synonymous terms, as used in the Act. An employer may have an enterprise with more than one establishment, or he may have more than one enterprise, in which he employs employees within the meaning of the Act. Also, there may be different employers who employ employees in a particular establishment or enterprise.

§ 779.20 Person.

As used in the Act (including the definition of "enterprise" set forth in § 779.21), "person" is defined as meaning "an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons." (Act, section 3(a).)

§ 779.21 Enterprise.

(a) Section 3(r) of the Act provides, in pertinent part, that "enterprise" as used in the Act—

"means the related activities performed (either through unified operation or common control) by any person or person for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor: *Provided*, That, within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (a) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (b) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (c) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments. * * *

The scope and application of this definitional language is discussed in Subpart C of this part.

(b) The 1966 amendments added two clauses to the above language of the definition to make it clear that "the activities performed by any person or persons" will be regarded as performed for a business purpose if they are performed—

"(1) In connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, an elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

"(2) In connection with the operation of a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit.)"

A discussion of the scope and application of this added language is contained in Part 776 of this chapter.

§ 779.22 Enterprise engaged in commerce or in the production of goods for commerce.

The portions of the former and present definitions of "enterprise engaged in commerce or in the production of goods for commerce" (contained in section 3 (s) of the Act prior to the 1966 amendments and as amended in 1966) which are important to a determination of the application of provisions of the Act to employees employed by retailers generally and by certain retail or service establishments are as follows:

Previous coverage (prior to the 1966 amendments)—

(s) "Enterprise engaged in commerce or in the production of goods for commerce" means any of the following in the activities of which employees are so engaged, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person:

(1) Any such enterprise which has one or more retail or service establishments if the annual gross volume of sales of such enterprise is not less than $1 million, exclusive of excise taxes at the retail level which are separately stated and if such enterprise purchases or receives goods for resale that move or have moved across State lines (not in deliveries from the reselling establishment) which amount in total annual volume to $250,000 or more;

* * * * *

(5) Any gasoline service establishment if the annual gross volume of sales of such establishment is not less than $250,000, exclusive of excise taxes at the retail level which are separately stated:

Provided, That an establishment shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce, or a part of an enterprise engaged in commerce or in the production of goods for commerce, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection, if the only employees of such establishment are the owner thereof or persons standing in the relationship of parent, spouse, or child of such owner.

New coverage (beginning with the 1966 amendments)—

(s) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person, and which—

(1) During the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline service establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated):

* * * * *

(4) Is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, an elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit).

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

§ 779.23 Establishment.

As used in the Act, the term "establishment", which is not specially defined therein, refers to a "distinct physical place of business" rather than to "an entire business or enterprise" which may include several separate places of business. This is consistent with the meaning of the term as it is normally used in business and in government, is judicially settled, and has been recognized in the Congress in the course of enactment of amendatory legislation (Phillips v. Walling, 324 U.S. 490; Mitchell v. Bekins Van & Storage Co., 352 U.S. 1027; 95 Cong. Rec. 12505, 12579, 14877; H. Rept. No. 1453, 81st Cong., 1st Sess., p. 25). As appears more fully elsewhere in this part, this is the meaning of the term as used in sections 3(r), 3(s), 6(d), 7(i), 13(a), 13(b), and 14 of the Act.

§ 779.24 Retail or service establishment.

In the 1949 amendments to the Act, the term "retail or service establishment", which was not previously defined in the law, was given a special definition for purposes of the Act. The legislative history of the 1961 and the 1966 amendments to the Act, which use the same term in a number of provisions relating to coverage and exemptions, indicates that no different meaning was intended by the term "retail or service establishment" as used in the new provisions from that already established by the Act's definition. On the contrary, the existing definition was reenacted in section 13(a)(2) of the Act as amended in 1961 and 1966 as follows: "A 'retail or service establishment' shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry". The application of this definition, which has had much judicial construction since its original enactment, is considered at length in Subpart D of this part. As is apparent from the quoted language, not every establishment which engages in retail selling of goods or services will constitute a "retail or service establishment" within the meaning of the Act.

Subpart B—Employment to Which the Act May Apply: Basic Principles and Individual Coverage

General Principles

§ 779.100 Basic coverage in general.

Except as otherwise provided in specific exemptions, the minimum wage, maximum hours, overtime pay, equal pay, and child labor provisions of the Act have applied and continue to apply subsequent to the 1966 amendments to employees who are individually engaged in interstate commerce or in the production of goods for such commerce as these terms are defined in the Act and to employees in certain enterprises described in the amended section 3(s) which were covered under section 3(s) of the Act prior to the amendments. Through the broadening of the definition of a covered enterprise the Act's coverage was extended to additional employees because of their employment in certain enterprises beginning February 1, 1967, and in certain other enterprises beginning February 1, 1969. Such covered enterprises are described in section 3(s) as enterprises engaged in commerce or in the production of goods for commerce and further described in sections 3(s)(1) through (4) of the amended Act. A detailed discussion of the coverage of employees in those enterprises covered under the prior and amended Act of interest to the retail industry is contained in Subpart C of this part. The employer must comply with the minimum wage and overtime requirements of the Act with respect to all employees who are covered either because they are individually engaged in interestate or foreign commerce or in the production of goods for such commerce, or because of their employment in an enterprise covered under the prior or amended enterprise definition of the Act, except those who may be denied one or both of these benefits by virtue of some specific exemption provision of the Act. Of special interest to the retailer in a covered enterprise is the exemption from the minimum wage and overtime provisions

for certain small retail or service establishments of such enterprise. This exemption is applicable under the conditions and subject to exceptions stated in section 13(a)(2) of the Act to any retail or service establishment which has an annual dollar volume of sales of less than $250,000 (exclusive of certain excise taxes) even if the establishment is a part of an enterprise that is covered by the Act. This exemption and other exemptions of particular interest to retailers and their employees are discussed in Subparts D and E of this part. The child labor provisions as they apply to retail or service businesses are discussed in Subpart F of this part.

§ 779.101 Guiding principles for applying coverage and exemption provisions.

It is clear that Congress intended the Fair Labor Standards Act to be broad in its scope. "Breadth of coverage is vital to its mission." (Powell v. U.S. Cartridge Co., 339 U.S. 497.) An employer who claims an exemption under the Act has the burden of showing that it applies. (Walling v. General Industries Co., 330 U.S. 545; Mitchell v. Kentucky Finance Co., 359 U.S. 290; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52.) Conditions specified in the language of the Act are "explicit prerequisites to exemption." (Arnold v. Kanowsky, 361 U.S. 388.) "The details with which the exemptions in this Act have been made preclude their enlargement by implication." (Addison v. Holly Hill, 322 U.S. 607; Maneja v. Waialua, 349 U.S. 254.) Exemptions provided in the Act "are to be narrowly construed against the employer seeking to assert them" and their application limited to those who come plainly and unmistakably within their terms and spirit; this restricted or narrow construction of the exemptions is necessary to carry out the broad objectives for which the Act was passed. (Phillips v. Walling, 324 U.S. 490; Mitchell v. Kentucky Finance Co., supra; Arnold v. Kanowsky, supra; Calaf v. Gonzalez, 127 F. 2d 934; Bowie v. Gonzalez, 117 F. 2d 11; Mitchell v. Stinson, 217 F. 2d 210; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52.)

§ 779.102 Scope of this subpart.

The Act has applied since 1938 and continues to apply to all employees, not specifically exempted, who are engaged (a) in interstate or foreign commerce or (b) in the production of goods for such commerce, which is defined to include any closely related process or occupation directly essential to such production. (See §§ 779.12–779.16 for definitions governing the scope of this coverage.) Prior to the 1961 amendments a retailer was not generally concerned with the coverage provisions as they applied to his individual employees because retail or service establishments ordinarily were exempt. However, in some cases such coverage was applicable as where employees were employed in central offices or warehouses of retail chain store systems and, therefore, were not exempt. (See § 779.118.) Some exemptions for retail or service establishments were narrowed as a result of the 1961 amendments and further revised or eliminated by the 1966 amendments effective February 1, 1967. Therefore, discussion of the individual coverage provisions of the Act is pertinent and this subpart will discuss briefly the principles of such coverage with particular reference to employment in the retail or service trades. A more comprehensive discussion with respect to employees engaged in commerce or in the production of goods for commerce may be found in Part 776 of this chapter, the general coverage bulletin.

Employees Engaged in Commerce or in the Production of Goods for Commerce

§ 779.103 Employees "engaged in commerce."

Employees are "engaged in commerce" within the meaning of the Act when they are performing work involving or related to the movement of persons or things (whether tangibles or intangibles, and including information and intelligence) among the several States or between any State and any place outside thereof. (The statutory definition of commerce is contained in section 3(b) of the Act and is set forth in § 779.12.) The courts have made it clear that this includes every employee employed in the channels of such commerce or in activities so closely related to this commerce, as to be considered a part of it as a practical matter. (Court cases are cited in the discussion of this term in §§ 776.9–776.13 of this chapter.) Typically, but not exclusively, employees engaged in interstate or foreign commerce include employees in distributing industries, such as wholesaling or retailing, who sell, handle or otherwise work on goods moving in interstate commerce as well as workers who order, receive, pack, ship, or keep records of such goods; clerical and other workers who regularly use the mails, telephone or telegraph for interstate communication; and employees who regularly travel across State lines while working.

§ 779.104 Employees "engaged in the production of goods for commerce."

The activities constituting "production" within the meaning of the phrase "engaged in * * * the production of goods for commerce" are defined in section 3(j) of the Act. (The statutory definition is set forth in § 779.13.) The handling or otherwise working on goods intended for shipment out of the State, directly or indirectly, is engagement in the "production" of goods for commerce. Thus, employees in retail stores who sell, pack, or otherwise work on goods which are to be shipped or delivered outside of the State are engaged in the production of goods for commerce. Typically, but not exclusively, employees engaged in the production of goods for interstate or foreign commerce, include those who work in manufacturing, processing and distributing establishments, including wholesale or retail establishments, that produce goods for interstate or foreign commerce. This includes everyone, including office, management, sales and shipping personnel, and maintenance, custodial and protective employees, whether they are employed by the producer or an intermediary. Employees may be covered even if their employer does not ship his goods directly in such commerce. The goods may leave the State through another firm. The workers may produce goods which become a part or ingredient of goods shipped in interstate or foreign commerce by another firm. Also covered are workers who are engaged in a closely related process or occupation directly essential to such production. (See § 779.105.)

§ 779.105 Employees engaged in activities "closely related" and "directly essential" to the production of goods for commerce.

Some employees are covered because their work, although not actually a part of such production, is "closely related" and "directly essential" to it. This group of employees includes bookkeepers, stenographers, clerks, accountants and auditors and other office and white collar workers, and employees doing payroll, timekeeping and time study work for the producer of goods; employees in the personnel, labor relations, advertising, promotion, and public relations activities of the producing enterprise; work instructors for the producer; employees maintaining, servicing, repairing or improving the buildings, machinery, equipment, vehicles or other facilities used in the production of goods for commerce, and such custodial and protective employees as watchmen, guards, firemen, patrolmen, caretakers, stockroom workers, and warehousemen; and transportation workers bringing supplies, materials, or equipment to the producer's premises, removing waste materials therefrom, or transporting materials or other goods, or performing such other transportation activities, as the needs of production may require. These examples are illustrative, rather than exhaustive, of the group of employees of a producer who are "engaged in the production of goods for commerce" by reason of performing activities closely related and directly essential to such production.

§ 779.106 Employees employed by an independent employer.

Where the work of an employee would be closely related and directly essential to the production of goods for commerce if he were employed by a producer of the goods, the mere fact that the employee is employed by an independent employer will not justify a different answer. (See §§ 776.17(c) and 776.19 of this chapter.)

§ 779.107 Goods defined.

The term "goods" is defined in section 3(i) of the Act and has a well established meaning under the Act since it has been contained in the statute from the date of its enactment in 1938. A comprehensive statement of the meaning of the term "goods" is contained in Part 776 of this chapter, which also cites the court cases in which the term was construed. The statutory definition of "goods" is set forth in § 779.14. It will be observed that

the term "goods" includes any part or ingredient of the goods. Also that "goods" as defined in the Act are not limited to commercial goods, or articles of trade, or, indeed, to tangible property, but include "articles or subjects of commerce of any character." Thus telegraphic messages have been held to be "goods" within the meaning of the Act (Western Union Tel. Co. v. Lenroot, 323 U.S. 490). Some of the "articles or subjects of commerce" which fall within the definition of "goods" include written materials such as newspapers, magazines, brochures, pamphlets, bulletins, and announcements; written reports, fiscal and other statements and accounts, correspondence, and other documents; advertising, motion pictures, newspaper and radio copy; art work and manuscripts for publication; sample books, letterheads, envelopes, shipping tags, labels, checkbooks, blankbooks, book covers, advertising circulars, and wrappers and other packaging materials.

§ 779.108 Goods produced for commerce.

Goods are "produced for commerce" if they are "produced, manufactured, mined, handled or in any other manner worked on" in any State for sale, trade, transportation, transmission, shipment or delivery, to any place outside thereof. Goods are produced for commerce where the producer intends, hopes, expects, or has reason to believe that the goods or any unsegregated part of them will move (in the same or in an altered form or as a part or ingredient of other goods) in interstate or foreign commerce. If such movement of the goods in commerce can reasonably be anticipated by the producer when the goods are produced, it makes no difference whether he himself or the person to whom the goods are transferred puts the goods in interstate or foreign commerce. The fact that goods do move in interstate or foreign commerce is strong evidence that the producer intended, hoped, expected, or had reason to believe that they would so move. Goods produced to serve the movement of interstate commerce within the same State are also produced for commerce within the meaning of the Act, as explained in Part 776 of this chapter.

§ 779.109 Amount of activities which constitute engaging in commerce or in the production of goods for commerce.

The Act makes no distinction as to the percentage, volume, or amount of activities of either the employee or the employer which constitute engaging in commerce or in the production of goods for commerce. However, an employee whose in-commerce or production activities are isolated, sporadic, or occasional and involve only insubstantial amounts of goods will not be considered "engaged in commerce or in the production of goods for commerce" by virtue of that fact alone. The law is settled that every employee whose activities in commerce or in the production of goods for commerce, even though small in amount are regular and recurring, is considered "engaged in commerce or in the production of goods for commerce".

§ 779.110 Employees in retailing whose activities may bring them under the Act.

The discussion in §§ 779.103–770.109 included general references to types of employees in the retail or service field whose individual activities constitute engagement in interstate or foreign commerce or in the production of goods for such commerce within the meaning of the Act. There are many classes of employees customarily employed by retail or service establishments or enterprises whose individual activities ordinarily constitute engagement in commerce or in the production of goods for commerce within the meaning of the Act. The groups of employees discussed in the following §§ 779.111 to 779.118, are illustrative only. There are other employees whose activities may be covered; also there are other activities performed by the groups discussed which would result in individual coverage under the Act.

§ 779.111 Buyers and their assistants.

Buyers and their assistants, employed by retail businesses, as a regular part of their duties, generally travel across State lines, or use the mails, telegraph, or telephone for interstate communication to order goods; or they regularly send or receive, across State lines, written reports, messages or other documents. These activities of such employees constitute engagement "in commerce" within the meaning of the Act.

§ 779.112 Office employees.

Similarly office employees of retail businesses who regularly and recurrently check records of and make payments for goods shipped to their employer from outside of the State, or regularly and recurrently keep records of or otherwise work on the accounts of their employer's out-of-State customers, or who regularly and recurrently prepare or mail letters, checks, reports or other documents to out-of-State points, are engaged both in commerce and in the production of goods for commerce within the meaning of the Act. Likewise, timekeepers who regularly and recurrently prepare and maintain payrolls for and pay employees who are engaged in commerce or in the production of goods for commerce are themselves engaged in covered activities.

§ 779.113 Warehouse and stock room employees.

Warehouse and stock room employees of retail businesses who regularly and recurrently engage in the loading or unloading of goods moving in commerce, or who regularly and recurrently handle, pack or otherwise work on goods that are destined to out-of-State points are engaged in covered activities.

§ 779.114 Transportation employees.

Transportation employees of retail businesses, such as truck drivers or truck drivers' helpers, who regularly and recurrently cross State lines to make deliveries or to pick up goods for their employer; or who regularly and recurrently pick up at rail heads, air, bus or other such terminals goods originating out of State, or deliver to such terminals goods destined to points out of State; and dispatchers who route, plan or otherwise control such out-of-State deliveries and pick ups, are engaged in interstate commerce within the meaning of the Act.

§ 779.115 Watchmen and guards.

Watchmen or guards employed by retail businesses who protect the warehouses, workshops, or store premises where goods moving in interstate or foreign commerce are kept or where goods are produced for such commerce, are covered under the Act.

§ 779.116 Custodial and maintenance employees.

Custodial and maintenance employees who perform maintenance and custodial work on the machinery, equipment, or premises where goods regularly are produced for commerce or from which goods are regularly shipped in interstate commerce are engaged in covered activities.

§ 779.117 Salesmen and sales clerks.

A salesman or a sales clerk who regularly and recurrently takes orders for, or sells, or selects merchandise for delivery to points outside the State or which are to be shipped or delivered to a customer from a point outside the State, i.e. drop shipments; or who wraps, packs, addresses or otherwise prepares goods for out-of-State shipments is performing covered activities.

§ 779.118 Employees providing central services for multi-unit organizations.

Employees providing central services for a multiunit organization may be engaged both "in commerce" and "in the production of goods for commerce" within the meaning of the Act. For example, employees engaged in work relating to the coordinated purchasing, warehousing and distribution (and in the administrative and clerical work relating to such activities) for various retail units of a chain are covered under the Act. (See Phillips Co. v. Walling, 324 U.S. 490; Walling v. Jacksonville Paper Co., 317 U.S. 564, affirming, 128 F. 2d 935 (CA–5); Mitchell v. C. & P. Stores, 286 F. 2d 109 (CA–5); Mitchell v. E. G. Shinner & Co., Inc., 221 F. 2d 260 (CA–7); Donovan v. Shell Oil Co., 168 F. 2d 776 (CA–8).) In addition, employees who regularly and recurrently correspond and maintain records of activities of out-of-State stores and such employees as traveling auditors, inventory men, window display men, etc., who regularly travel from State to State in the performance of their duties are covered under the Act. (See Mitchell v. Kroger Co., 248 F. 2d 935 (CA–8).)

§ 779.119 Exempt occupations.

Of course, it should be noted that although employees may be engaged in commerce or in the production of goods for commerce within the meaning of the

Act, they may be exempt from the Act's minimum wage or overtime provisions (or both). For a complete list of such exemptions the Act should be consulted. Those exemptions, however, which are of particular interest to employers and employees in the retail field are discussed in Subparts D, E, and F of this part.

Subpart C—Employment to Which the Act May Apply; Enterprise Coverage

Enterprise; The Business Unit

§ 779.200 Coverage expanded by 1961 and 1966 amendments.

The 1961 amendments for the first time since the enactment of the Fair Labor Standards Act of 1938 provided that all employees in a particular business unit are covered by the Act. Prior to the 1961 amendments each employee's coverage depended on whether that employee's activities were in commerce or constituted the production of goods for commerce. All employees employed in an "enterprise" described in section 3(s) (1) through (5) of the Act as it was amended in 1961 and section 3(s) (1) through (4) of the Act as amended in 1966 are also covered. Thus, it is necessary to consider the meaning of the term "enterprise" as used in the Act.

§ 779.201 The place of the term "enterprise" in the Act.

The term "enterprise" is defined in section 3(r) of the Act and, wherever used in the Act, is governed by this definition. (§ 799.21(a) provides that portion of the definition of "enterprise" which is pertinent with respect to retail and service enterprises.) The term is a key in determining the applicability of the Act to these businesses. The "enterprise" is the unit for determining whether the conditions of section 3(s) (1) through (5) of the prior Act and section 3(s) (1) through (4) of the amended Act, including, where applicable, the requisite dollar volume are met. The "enterprise" is also the unit for determining which employees not individually covered by the Act are entitled to the minimum wage, overtime, and equal pay benefits, and to the child labor protection, under sections 6, 7, and 12 of the Act. In general, if the "enterprise" comes within any of the categories described in section 3(s) (1) through (5) of the prior Act or section 3(s) (1) through (4) of the amended Act, all employees employed in the "enterprise" are covered by the Act and, regardless of their duties, are entitled to the Act's benefits unless a specific exemption applies.

§ 779.202 Basic concepts of definition.

Under the definition, the "enterprise" consists of "the related activities performed * * * for a common business purpose." All of the activities comprising the enterprise must be "related." Activities serving a single business purpose may be related, although different, but other activities which are not related are not included in the enterprise. The definition makes clear that the enterprise includes all such related activities which are performed through "unified operation" or "common control." This is true even if they are performed by more than one person, or in more than one establishment, or by more than one corporate or other organizational unit. Specifically included, as a part of the enterprise, are departments of an establishment operated through leasing arrangements. On the other hand, the definition excludes from the "enterprise" activities only performed "for" the enterprise rather than as a part of it by an independent contractor even if they are related to the activities of the enterprise. Also, it makes clear that a truly independent retail or service establishment does not become a part of a larger enterprise merely because it enters into certain types of franchise or collective purchasing arrangements or because it has a common landlord with other such retail establishments.

§ 779.203 Distinction between "enterprise", "establishment", and "employer."

The coverage, exemption and other provisions of the Act depend, in part, on the scope of the terms "employer," "establishment," or "enterprise." As explained more fully in Part 776 of this chapter, these terms are not synonymous. The term "employer" has been defined in the Act since its inception and has a well established meaning. As defined in section 3(d), it includes, with certain stated exceptions, any person acting directly or indirectly in the interest of an employer in relation to an employee. (See § 779.19.) The term "establishment" means a "distinct physical place of business" rather than "an entire business or enterprise." (See § 779.23.) The term "enterprise" was not used in the Act prior to the 1961 amendments, but the careful definition and the legislative history of the 1961 and 1966 amendments provide guidance as to its meaning and application. As defined in the Act, the term "enterprise" is roughly descriptive of a business rather than of an establishment or of an employer although on occasion the three may coincide. The enterprise may consist of a single establishment (see § 779.204(a)) which may be operated by one or more employers; or it may be composed of a number of establishments which may be operated by one or more employers (see § 779.204(b)). The enterprise is not necessarily coextensive with the entire business activities of an employer; a single employer may operate more than one enterprise (see § 779.204(c)). The Act treats as separate enterprises different businesses which are unrelated to each other even if they are operated by the same employer.

§ 779.204 Common types of "enterprise."

(a) *The single establishment business.* In the simplest type of organization—the entire business ordinarily is one enterprise. The entire business activity of the single owner-employer may be performed in one establishment, as in the typical independently owned and controlled retail store. In that case the establishment and the enterprise are one and the same. All of the activities of the store are "related" and are performed for a single business purpose and there is both unified operation and common control. The entire business is the unit for applying the statutory tests. If the coverage tests are met, all of the employees employed by the establishment are employed in the enterprise and will be entitled to the benefits of the Act unless otherwise exempt.

(b) *The multiunit business.* In many cases, as in the typical chain of retail stores, one company conducts its single business in a number of establishments. All of the activities ordinarily are related and performed for one business purpose, the single company which owns the chain also controls the entire business, and the entire business is a single enterprise. The dollar volume of the entire business from all of its establishments is added together to determine whether the requisite dollar volume tests are met. If the coverage tests are met, all of the employees employed in the business will be entitled to the benefits of the Act unless otherwise exempt.

(c) *Complex business organizations.* In complex retail and service organizations, questions may arise as to whether certain activities are a part of a particular enterprise. In some cases one employer may operate several separate enterprises; in others, several employers may conduct their business activities in such a manner that they are part of a single enterprise. The answer, in each case, as to whether or not the "enterprise" includes certain activities will depend upon whether the particular activities are "related" to the business purpose of such enterprise and whether they are performed with its other activities through "unified operation" or "common control," or whether, on the other hand, they are performed for a separate and distinct business purpose. As the Senate Report states,

> "related activities conducted by separate business entities will be considered a part of the same enterprise where they are joined either through unified operation or common control into a unified business system or economic unit to serve a common business purpose."

(S. Rept. 145, 87th Cong., 1st Sess., p. 41; see also H. Rept. 1366, 89th Cong., 2d Sess., p. 9.) §§ 779.205 through 779.211 discuss the terms of the definition and may aid in making these determinations.

Related Activities

§ 779.205 Enterprise must consist of "related activities."

The enterprise must consist of certain "related activities" performed for a common business purpose; activities which are not "related" are not a part of the enterprise even if performed by the same employer. Moreover, even if activities are "related" they may be excluded from the enterprise if they are performed only

"for" the enterprise and not as a part of it by an independent contractor. This is discussed separately in § 779.206.

§ 779.206 What are "related activities."

(a) The Senate Report on the 1961 amendments states as follows, with respect to the meaning of related activities:

> Within the meaning of this term, activities are "related" when they are the same or similar, such as those of the individual retail or service stores in a chain, or departments of an establishment operated through leasing arrangements. They are also "related" when they are auxiliary and service activities such as central office and warehousing activities and bookkeeping, auditing, purchasing, advertising and other services. Likewise, activities are "related" when they are part of a vertical structure such as the manufacturing, warehousing, and retailing of a particular product or products under unified operation or common control for a common business purpose. (Senate Report No. 145, 87th Cong., 1st Sess., Page 41.)

Thus, activities will be regarded as "related" when they are the same or similar or when they are auxiliary or service activities such as warehousing, bookkeeping, purchasing, advertising, including, generally, all activities which are necessary to the operation and maintenance of the particular business. So also, all activities which are performed as a part of a unified business operation will be "related," including, in appropriate cases, the manufacturing, warehousing, and distribution of its goods, the repair and maintenance of its equipment, machinery and its premises, and all other activities which are performed for the common business purpose of the enterprise. The Senate Report on the 1966 amendments makes it plain that related, even if somewhat different, business activities can frequently be part of the same enterprise, and that activities having a reasonable connection with the major purpose of an enterprise would be considered related. (Senate Report No. 1487, 89th Cong., 2d Sess., Page 7.) A more comprehensive discussion of "related activities" will be found in Part 776 of this chapter.

(b) Generally, the answer to the question whether particular activities are "related" or not, will depend in each case upon whether the activities serve a business purpose common to all the activities of the enterprise, or whether they serve a separate and unrelated business purpose. For example, where a company operates retail or service establishments, and also engages in a separate and unrelated construction business, the construction activities will not be "related" and will constitute a separate enterprise if they are conducted independently and apart from the retail operations. Where, however, the retail and construction activities are conducted for a common business purpose, they may be "related," and if they are performed through unified operation or common control, they will be a part of a single enterprise. Thus, a retail store enterprise may engage in construction activities as an additional outlet for building materials which it sells, or otherwise to serve its retail operations. It may act as its own contractor in constructing or reconstructing its own stores and related facilities. In such a case, the construction activities will be "related" activities. Other examples may also be cited. The answer in each case will necessarily depend upon all the facts.

§ 779.207 Related activities in retail operations.

In the case of an enterprise which has one or more retail or service establishments, all of the activities which are performed for the furtherance of the common business purpose of operating the retail or service establishments are "related activities." It is not material that the enterprise sells different goods or provides different services, or that it operates separate retail or service establishments. As stated in the definition, the enterprise includes all related activities whether performed "in one or more establishments." Since the activities performed by one retail or service establishment are the "same or similar" to the activities performed by another, they are, as such, "related activities." (See Senate Report No. 145, 87th Cong. 1st Sess. p. 41.) For example, in operations of a single retailing business a drug store may sell a large variety of different products, and a grocery store may sell clothing and furniture and other goods. Clearly all of these activities are "related." Similarly it is clear that all activities of a department store are "related activities," even if the store sells a great variety of different types of goods and services and even if, as in some cases, the departmentalized business is conducted in more than one location, as where the department selling garden supplies or electrical appliances is located on separate premises. Whether on the premises or at separate locations, the activities involved in retail selling of goods or services, of any type, are related activities and they will be considered one enterprise where they are performed, through unified operation or common control, for a common business purpose.

§ 779.208 Auxiliary activities which are "related activities."

As stated in Senate Report No. 145, 87th Congress, 1st Session, cited in § 779.206, auxiliary and service activities, such as central office and warehousing activities and bookkeeping, auditing, purchasing, advertising and other similar services, also are "related activities." When such activities are performed through unified operation or common control, for a common business purpose, they will be included in the enterprise. The following are some additional examples of auxiliary activities which are "related activities" and which may be included in the enterprise: (a) credit rating and collection services; (b) promotional activities including advertising, sign painting, display services, stamp redemptions, and prize contests; (c) maintenance and repair services of plant machinery and equipment including painting, decorating, and similar services; (d) store or plant engineering, site location and related survey activities; (e) detective, guard, watchmen, and other protective services; (f) delivery services; (g) the operation of employee or customer parking lots; (h) the recruitment, hiring and training activities, and other managerial services; (i) recreational and health facilities for customers or employees including eating and drinking facilities (note that employees primarily engaged in certain food service activities in retail establishments may be exempt from the overtime provisions under section 13(b)(18) of the Act if the specific conditions are met; see § 779.388); (j) the operation of employee benefit and insurance plans; and (k) repair and alteration services on goods for sale or sold to customers.

§ 779.209 Vertical activities which are "related activities."

(a) The Senate Report also states (see § 779.206 that activities are "related" when they are "part of a vertical structure such as the manufacturing, warehousing, and retailing of a particular product or products." Where such activities are performed through unified operation or common control for a common business purpose they will be regarded as a part of the enterprise.

(b) Whether activities are vertically "related" activities and part of a single enterprise, or whether they constitute separate businesses and separate enterprises, depends upon the facts in each case. In all of these cases of so-called "vertical operations," the determination whether the activities are "related," depends upon the extent to which the various business activities, such as wholesaling and retailing or manufacturing and retailing, are interrelated and interdependent and are performed to serve a business objective common to all. The mere fact that they are under common ownership is not, by itself, sufficient to bring them within the same enterprise. Thus, where a manufacturing business is carried on separately from and wholly independently of a retail business, with neither serving the business purpose of the other, they are separate businesses even if they are under common ownership. However, where the manufacturing operations are performed in substantial part for the purpose of distributing the goods through the retail stores, or the retail outlet serves to carry out a business purpose of the manufacturing plant, retailing and manufacturing will be "related" activities and performed for a "common business purpose," and they will be a single enterprise if they are performed through unified operations or common control.

(c) In these cases of "vertical operations" a practical judgment will be required to determine whether the activities are maintained and operated as separate and distinct businesses with different objectives or whether they, in fact, constitute a single integrated business enterprise. The answer necessarily will depend upon all the facts in each case.

§ 779.210 Other activities which may be part of the enterprise.

(a) An enterprise may perform certain activities that appear entirely foreign to its principal business but which may be a part of the enterprise because

of the manner in which they are performed. In some cases these activities may be a very minor and incidental part of its business operations. For example a retail store may accept payments of utility bills, provide a notarial service, sell stamps, bus and theater tickets, or travellers' checks, etc. These and other activities may be entirely different from the enterprise's principal business but they may be performed on the same premises and by the same employees or otherwise under such circumstances as to be a part of the enterprise.

(b) Sometimes such activities are performed as an adjunct to the principal business to create good will or to attract customers. In other cases, the businessman may engage in them primarily for the additional revenue. Some such foreign activities may be conducted in a more elaborate manner, as where the enterprise operates a bus stop or a post office substation as an adjunct to a principal business such as a hotel or a principal business such as a hotel or retail store. Where in such a case the activities are performed in a physically separate "establishment" (see §§ 779.303–779.308) from the other business activities of the enterprise and are functionally operated as a separate business, separately controlled, with separate employees, separate records, and a distinct business objective of its own, they may constitute a separate enterprise. Where, however, such activities are intermingled with the other activities of the enterprise and have a reasonable connection to the same business purpose they will be a part of the enterprise.

§ 779.211 Status of activities which are not "related."

Activities which are not related even if performed by the same employer are not included as a part of the enterprise. The receipts from the unrelated activities will not be counted toward the annual dollar volume of sales or business under section 3(s) and the employees performing such unrelated activities will not be covered merely because they work for the same employer. Common ownership standing alone does not bring unrelated activities within the scope of the same enterprise. If, for example, one individual owns or controls a bank, a filling station, and a factory, the mere fact of common ownership will not make them one enterprise. However, if it appears that there is a reasonable relationship of all the activities to a single business purpose a different conclusion might be warranted. Activities which are not "related" will be treated separately for purposes of the tests contained in section 3(s) (1) through (5) of the prior Act and section 3(s) (1) through (4) of the amended Act. For example, in the case where a single company operates retail grocery stores and also engages in an unrelated business of constructing homes, one "enterprise" for purposes of section 3(s) (1) of both the prior and the amended Act will consist of the retail grocery stores and any activities related to them, and home construction activities will constitute a separate enterprise. The latter will not be included in determining whether the retail business enterprise meets the conditions of section 3(s) (1), and the construction employees will not be covered merely because the retail business is covered. The construction business will be considered separately under section 3(s) (4) of the prior Act and section 3(s) (3) of the amended Act.

Common Business Purpose

§ 779.212 Enterprise must consist of related activities performed for a "common business purpose."

The related activities described in section 3(r) as included in the statutory enterprise are those performed for a "common business purpose." (See the comprehensive discussion in 29 CFR Part 776.) The term "common business purpose" as used in the definition does not have a narrow concept and is not intended to be limited to a single business establishment or a single type of business. As pointed out above, retailing, wholesaling and manufacturing may, under certain circumstances be engaged in for a "common business purpose." (See § 779.209.) An example was also cited where retailing and construction were performed for a common business purpose. (See § 779.206.) On the other hand, it is clear that even a single individual or corporation may perform activities for different business purposes. (See § 779.211.) Thus the reports of the House of Representatives cites, as an example of this, the case of a single company which owns several retail apparel stores and is also engaged in the lumbering business. It concludes that these activities are not part of a single enterprise. (H. Rept. 75, 87th Cong., 1st Sess., p. 7 and H. Rept. 1366, 89th Cong., 2d Sess., p. 9.)

§ 779.213 What is a common business purpose.

Generally, the term "common business purpose" will encompass activities, whether performed by one person or by more than one person, or corporation, or other business organization, which are directed to the same business objective or to similar objectives in which the group has an interest. The scope of the term "enterprise" encompasses a single business entity as well as a unified business system which performs related activities for a common business purpose. What is a "common business purpose" in any particular case involves a practical judgment based on the facts in the light of the statutory provisions and the legislative intent. The answer ordinarily will be readily apparent from the facts. The facts may show that the activities are related to a single business objective or that they are so operated or controlled as to form a part of a unified business system which is directed to a single business objective. In such cases, it will follow that they are performed for a common business purpose. Where, however, the facts show that the activities are not performed as a part of such enterprise but for an entirely separate and unrelated business, they will be considered performed for a different business purpose and will not be a part of that enterprise. The application of these principles is considered in more detail in Part 776 of this chapter.

§ 779.214 "Business" purpose.

The activities described in section 3(r) are included in an enterprise only when they are performed for a "business" purpose. Activities of eleemosynary, religious, or educational organization may be performed for a business purpose. Thus, where such organizations engage in ordinary commercial activities, such as operating a printing and publishing plant, the business activities will be treated under the Act the same as when they are performed by the ordinary business enterprise. (See Mitchell v. Pilgrims Holiness Church Corp., 210 F. 2d 879 (CA–7); cert. den. 347 U.S. 1013.) However, the nonprofit educational, religious, and eleemosynary activities will not be included in the enterprise unless they are of the types which the last sentence of section 3(r), as amended in 1966, declares shall be deemed to be performed for a business purpose. Such activities were not regarded as performed for a business purpose under the prior Act and are not so considered under the Act as it was amended in 1966 except for those activities listed in the last sentence of amended section 3(r). (See § 779.21.)

Unified Operation or Common Control

§ 779.215 General scope of terms.

(a) Under the definition related activities performed for a common business purpose will be a part of the enterprise when they are performed either through "unified operation" or "common control." It should be noted that these conditions are stated in the alternative. Thus if it is established that the described activities are performed through "common control," it is unnecessary to show that they are also performed through "unified operation," although frequently both conditions may exist.

(b) Under the definition the terms "unified operation" and "common control" refer to the performance of the "related activities." They do not refer to the ownership of the activities. Although ownership may be a significant factor in determining control (see § 779.222), the related activities will be a part of the enterprise even if they are not under common ownership, so long as they are performed for a common business purpose through unified operation or common control. Further, under the definition the terms "unified operation" and "common control" refer to the performance only of the particular related activities and not to other activities which may be performed by the various persons, corporations, or other business organizations, comprising the enterprise. Thus where two or more individuals or business organizations perform certain of their activities through unified operation or common control, these activities will be part of a single enterprise, assuming of course they are related activities performed for a common business purpose. Finally, the definition in section

3(r) makes clear that the described activities may be performed through unified operation or common control "in one or more establishments or by one or more corporate or other organizational units." The Senate Report on the 1966 amendments makes the following comment with respect to this:

> Also, the operations through substantial ownership or control of a number of firms engaged in similar types of business activities constitute, in the committee's view, related activities performed through unified operation or common control within the meaning of the definition of enterprise. The fact the firms are independently incorporated or physically separate or under the immediate direction of local management, as in Wirtz v. Hardin, 16 Wage Hour Cases 722 (N.D. Ala.), is not determinative of this question. (Sen. Rept. No. 1487, 89th Congress, 2nd session, page 7.)

But where, as in the case of a retail store owned by a partnership and another store owned by one of the partners providing similar goods or services, it appears that the activities of the separate stores have no functional interdependence and that they are separately conducted to serve the business purpose of the partnership on the one hand and the business purpose of the individual on the other hand, the requirement of performance "through common control" of "related activities" for a "common business purpose" may not be sufficiently met.

§ 779.216 Statutory construction of the terms.

The terms "unified operation" and "common control" do not have a fixed legal or technical meaning. As used in the definition, these and other terms must be given an interpretation consistent with the Congressional intention to be ascertained from the context in which they are used, the legislation of which they form a part, and the legislative history. In extending coverage of the Act on an "enterprise" basis, the Congress intended, by the 1961 and 1966 amendments to cover, among others, business organizations and chain store systems which may perform their related activities through complex business arrangements or business structures, whether they perform their activities for a common business purpose through unified operation or through the retention or exercise of control. For these reasons, the definition of the term "enterprise" is stated in broad general terms. This legislative intent is evidenced both by the statements in the Committee Reports and by the definition itself, particularly the broad references to the inclusion in the "enterprise" of "all such activities" whether performed "in one or more establishments" or "by one or more corporate or other organizational units." When the Act was amended in 1966 the Congress further broadened coverage by redefining an enterprise engaged in commerce or in the production of goods for commerce in section 3(s). (See § 779.22.) Where the Congress intended to exclude certain arrangements or activities from the "enterprise" it did so by specific provision under the prior and amended Act.

§ 779.217 "Unified operation" defined.

Webster defines the word "unify" to mean "to cause to be one; to make into a unit; to unite." The pertinent definition of "operation" is a method or way of operating, working or functioning. Since the term "unified operation" has reference to the method of performing the related activities, it means combining, uniting, or organizing their performance so that they are in effect a single business unit or an organized business system which is an economic unit directed to the accomplishment of a common business purpose. The term "unified operation" thus includes a business which may consist of separate segments but which is conducted or operated as a unit or as a single business for a common business purpose.

§ 779.218 Methods to accomplish "unified operation."

There are many instances where several establishments, persons, corporations, or other business organizations, join together to perform some or all of their activities as a unified business or business system. They may accomplish such unification through agreements, franchises, grants, leases, or other arrangements which have the effect of aligning or integrating the activities of one company with the activities of others so that they constitute a single business or unified business system. Whether in any particular case the activities are performed through "unified operation" and have the effect of creating a single enterprise, will depend upon all the facts, including the manner in which the activities are performed, the agreements and arrangements which govern their performance, and the other relationships between the parties, considered in the light of the statutory provision and the legislative intent. (cf Wirtz v. Wornom's Pharmacy (E.D. Va.), 18 WH Cases 289, 365; 57 Labor Cases 32,006, 32,030.)

§ 779.219 Unified operation may be achieved without common control or common ownership.

The performance of related activities through "unified operation" to serve a common business purpose may be achieved without common control and without common ownership. In particular cases ownership or control of the related activities may be factors to be considered, along with all facts and circumstances, in determining whether the activities are performed through "unified operation." It is clear from the definition that if the described activities are performed through unified operation they will be part of the enterprise whether they are performed by one company or by more than one corporate or other organizational unit. The term "unified operation" has reference particularly to enterprises composed of a number of separate companies as is clear in the quotation from the Senate Report in § 779.215. Where the related activities are performed by a single company, or under other single ownership, they will ordinarily be performed through "common control," and the question of whether they are also performed through unified operation will not need to be decided. (Wirtz v. Barnes Grocer Co., 398 F. 2d 718 (C.A. 8).)

§ 779.220 Unified operation may exist as to separately owned or controlled activities which are related.

Whether there is unified operation of related activities will thus be of concern primarily in those cases where the related activities are separately owned or controlled but where, through arrangement, agreement or otherwise, they are so performed as to constitute a unified business system organized for a common business purpose. For example, a group of separately incorporated, separately owned companies, may agree to conduct their activities in such manner as to be for all intents and purposes a single business system except for the fact that the ownership and control of the individual segments of the business are retained, in part or in whole, by the individual companies comprising the unified business system. The various units may operate under a single trade name; construct their establishments to appear identical; use identical equipment; sell generally the same goods or provide the same type of services, and, in some cases, at uniform standardized prices; and in other respects appear to the persons utilizing their services or purchasing their goods as being the same business. They also may arrange for group purchasing and warehousing; for advertising as a single business; and for standardization of their records, as well as their credit, employment, and other business policies and practices. In such circumstances the activities may well be performed through "unified operation" sufficient to consider all of the related activities performed by the group of units as constituting one enterprise, despite the separate ownership of the various segments and despite the fact that the individual units or segments may retain control as to some or all of their own activities. That this is in accord with the congressional intent is plain, since where the Congress intended that such arrangements shall not bring a group of certain individual retail or service establishments into a single enterprise, provision to accomplish such exception was specifically included. (See § 779.226, discussing the proviso in section 3(r) with respect to certain franchise and other specified arrangements entered into between independently owned retail or service establishments and other businesses.)

§ 779.221 "Common control" defined.

Under the definition the "enterprise" includes all related activities performed through "common control" for a common business purpose. The word "control" may be defined as the act or fact of controlling; power or authority to

control; directing or restraining domination. "Control" thus includes the power or authority to control. In relation to the performance of the described activities, the "control," referred to in the definition in section 3(r) includes the power to direct, restrict, regulate, govern, or administer the performance of the activities. "Common" control includes the sharing of control and it is not limited to sole control or complete control by one person or corporation. "Common" control therefore exists where the performance of the described activities are controlled by one person or by a number of persons, corporations, or other organizational units acting together. This is clearly supported by the definition which specifically includes in the "enterprise" all such activities whether performed by "one or more corporate or other organizational units." The meaning of "common control" is discussed comprehensively in Part 776 of this chapter.

§ 779.222 Ownership as factor.

As pointed out in § 779.215 "unified operation" and "common control" do not refer to the ownership of the described activities but only to their performance. It is clear, however, that ownership may be an important factor in determining whether the activities are performed through "unified operation or common control." Thus common control may exist where there is common ownership. Where the right to control, one of the prerogatives of ownership, exists, there may be sufficient "control" to meet the requirements of the statute. Ownership, or sufficient ownership to exercise control, will be regarded as sufficient to meet the requirement of "common control." Where there is such ownership, it is immaterial that some segments of the related activities may operate on a semiautonomous basis, superficially free of actual control, so long as the power to exercise control exists through such ownership. (See Wirtz v. Barnes Grocer Co., 398 F. 2d 718 (C.A. 8).) For example, a parent corporation may operate a chain of retail or service establishments which, for business reasons, may be divided into several geographic units. These units may have certain autonomy as to purchasing, marketing, labor relations, and other matters. They may be separately incorporated, and each unit may maintain its own records, including records of its profits or losses. All the units together, in such a case, will constitute a single enterprise with the parent corporation. They would constitute a single business organization under the "common control" of the parent corporation so long as they are related activities performed for a common business purpose. The common ownership in such cases provides the power to exercise the "control" referred to in the definition. It is clear from the Act and the legislative history that the Congress did not intend that such a chain organization should escape the effects of the law with respect to any segment of its business merely by separately incorporating or otherwise dividing the related activities performed for a common business purpose.

§ 779.223 Control where ownership vested in individual or single organization.

Ownership, sufficient to exercise "control," of course, exists where total ownership is vested in a single person, family unit, partnership, corporation, or other single business organization. Ownership sufficient to exercise "control" exist also where there is more than 50 percent ownership of voting stock. (See West v. Wal-Mart, 264 F. Supp. 168 (W.D. Ark.).) But "control" may exist with much more limited ownership, and, in certain cases, exists in the absence of any ownership. The mere ownership of stock in a corporation does not by itself establish the existence of the "control" referred to in the definition. The question whether the ownership in a particular case includes the right to exercise the requisite "control" will necessarily depend upon all the facts in the light of the statutory provisions.

§ 779.224 Common control in other cases.

(a) As stated in § 779.215 "common control" may exist with or without ownership. The actual control of the performance of the related activities is sufficient to establish the "control" referred to in the definition. In some cases an owner may actually relinquish his control to another, or by agreement or other arrangement, he may so restrict his right to exercise control as to abandon the control or to share the control of his business activities with other persons or corporations. In such a case, the activities may be performed under "common control." In other cases, the power to control may be reserved through agreement or arrangement between the parties so as to vest the control of the activities of one business in the hands of another.

(b) Activities are considered to be performed under "common control" even if, because of the particular methods of operation, the power to control is only seldom used, as where the business has been in operation for a long time without change in methods of operation and practically no actual direction is necessary; also common control may exist where the control, although rarely visibly exercised, is evidenced by the fact that mere suggestions are adopted readily by the business being controlled.

(c) In the retail industry, particularly, there are many instances where, for business reasons, related activities performed by separate companies are so unified or controlled as to constitute a single enterprise. A common example, specifically named in the definition, is the leased department. This and other examples are discussed in §§ 779.225 through 779.235.

Leased Departments, Franchise and Other Business Arrangements

§ 779.225 Leased departments.

(a) As stated in section 3(r), the enterprise includes "departments of an establishment operated through leasing arrangements." This statutory provision is based on the fact that ordinarily the activities of such leased departments are related to the activities of the establishment in which they are located, and they are performed for a common business purpose either through "unified operation" or "common control." A general discussion will be found in Part 776 of this chapter.

(b) In the ordinary case, a retail or service establishment may control many of the operations of a leased department therein and unify its operation with its own. Thus, they may operate under a common trade name: The host establishment may determine, or have the power to determine, the leased department's space location, the type of merchandise it will sell, its pricing policy, its hours of operation and some or all of its hiring, firing and other personnel policies; advertising, adjustment and credit operations, may be unified, and insurance, taxes, and other matters may be included as a part of the total operations of the establishment. Some or all of these and other functions, which are the normal prerogatives of an independent businessman, may be controlled or unified with the store's other activities in such a way as to constitute a single enterprise under the Act.

(c) Since the definition specifically includes in the "enterprise," for the purpose of this Act, "departments of an establishment operated through leasing arrangements," any such department will be considered a part of the host establishment's enterprise in the absence of special facts and circumstances warranting a different conclusion.

(d) Whether, in a particular case, the relationship is such as to constitute the lessee's operation to be a separate establishment of a different enterprise rather than a "leased department" of the host establishment as described in the definition, will depend upon all the facts including the agreements and arrangements between the parties as well as the manner in which the operations are conducted. If, for example, the facts show that the lessee occupies a physically separate space with (or even without) a separate entrance, and operates under a separate name, with his own separate employees and records, and in other respects conducts his business independently of the lessor's, the lessee may be operating a separate establishment or place of business of his own and the relationship of the parties may be only that of landlord and tenant. In such a case, the lessee's operation will not be regarded as a "leased department" and will not be included in the same enterprise with the lessor.

(e) The employees of a leased department would not be covered on an enterprise basis if such leased department is located in an establishment which is not itself a covered enterprise or part of a covered enterprise. Likewise, the applicability of exemptions for certain retail or service establishments from the Act's minimum wage or overtime pay provisions, or both, to employees of a leased

department would depend upon the character of the establishment in which the leased department is located. Other sections of this subpart discuss the coverage of leased retail and service departments in more detail while Subpart D of this part explains how exemptions for certain retail and service establishments apply to leased department employees.

§ 779.226 Exception for an independently owned retail or service establishment under certain franchise and other arrangements.

While certain franchise and other arrangements may operate to bring the one to whom the franchise is granted into another enterprise (see § 779.232), section 3(r) contains a specific exception for certain arrangements entered into by a retail or service establishment which is under independent ownership. The specific exception in section 3(r) reads as follows:

Provided, That, within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (1) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, (2) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

§ 779.227 Conditions which must be met for exception.

This exception, in accordance with its specific terms, will apply to exclude an establishment from enterprise coverage only if the following conditions are met:

(a) The establishment must be a "retail or service establishment" as this term is defined in section 13(a)(2) of the Act (See discussion of this term in §§ 779.312 and 779.313); and

(b) The retail or service establishment must not be an "enterprise" which is large enough to come within the scope of section 3(s) of the Act; and

(c) The retail or service establishment must be under independent ownership.

§ 779.228 Types of arrangements contemplated by exception.

If the retail or service establishment meets the requirements in paragraphs (a) through (c) of § 779.227, it may enter into the following arrangements without becoming a part of the larger enterprise, that is, without losing its status as a "separate and distinct enterprise" to which section 3(s) would not otherwise apply:

(a) Any arrangement, whether by agreement, franchise or otherwise, that it will sell, or sell only certain goods specified by a particular manufacturer, distributor, or advertiser.

(b) Any such arrangement that it will have the exclusive right to sell the goods or use the brand name of a manufacturer distributor, or advertiser within a specified area.

(c) Any such arrangement by which it will join with other similar retail or service establishments in the same industry for the purpose of collective purchasing. Where an agreement for "collective purchasing" is involved, further requirements are imposed, namely, that all of the other establishments joining in the agreement must be retail or service establishments under independent ownership, and that all of the establishments joining in the collective purchasing arrangement must be "in the same industry." This has reference to such arrangements by a group of grocery stores, or by some other trade group in the retail industry.

(d) Any arrangement whereby the establishment's premises are leased from a person who also leases premises to other retail or service establishments. In connection with this rental arrangement, the Senate Report cites as an example the retail establishment which rents its premises from a shopping center operator (S. Rept. 145, 87th Cong., 1st Sess., p. 41). It is clear that this exception was not intended to apply to the usual leased department in an establishment, which is specifically included within the larger enterprise under the definition of section 3(r). (See discussion under § 779.225.)

§ 779.229 Other arrangements.

With respect to those arrangements specifically described in the proviso contained in the definition, an independently owned retail or service establishment will not be considered to be other than a separate and distinct enterprise, if other arrangements the establishment makes do not have the effect of bringing the establishment within a larger enterprise. Whether or not other arrangements have such an effect will necessarily depend upon all the facts. The Senate Report makes the following observations with respect to this:

Thus the mere fact that a group of independently owned and operated stores join together to combine their purchasing activities or to run combined advertising will not for these reasons mean that their activities are performed through unified operation or common control and they will not for these reasons be considered a part of the same "enterprise." This is also the case in food retailing because of the great extent to which local independent food store operators have joined together in many phases of their business. While maintaining their stores as independently owned units, they have affiliated together not just for the purchasing of merchandise, but also for providing numerous other services such as (1) central warehousing; (2) advertising; (3) sales promotions; (4) managerial advice; (5) store engineering; (6) accounting systems; (7) site locations; and (8) hospitalization and life insurance protection. (S. Rept. 145, 87th Cong., 1st Sess., p. 42.)

The report continues with the following observations:

Whether such arrangements bring the establishment within the franchisor's, lessor's, or grantor's "enterprise" is a question to be determined on all the facts. The facts may show that the arrangements reserve the necessary right of control in the grantor or unify the operations among the separate "franchised" establishments so as to create an economic unity of related activities for a common business purpose. In that case, the "franchised" establishment will be considered a part of the same "enterprise." For example, whether a franchise, lease, or other contractual arrangement between a distributor and a retail dealer has the effect of bringing the dealer's establishments within the enterprise of the distributor will depend upon the terms of the agreements and the related facts concerning the relationship between the parties.

There may be a number of different types of arrangements established in such cases. The key in each case may be found in the answer to the question, "Who receives the profits, suffers the losses, sets the wages and working conditions of employees, or otherwise manages the business in those respects which are the common attributes of an independent businessman operating a business for profit?"

For instance, a bona fide independent automobile dealer will not be considered a part of the enterprise of the automobile manufacturer or of the distributor. Likewise, the same result will also obtain with respect to the independent components of a shopping center.

In all of these cases if it is found on the basis of all the facts and circumstances that the arrangements are so restrictive as to products, prices, profits, or management as to deny the "franchised" establishment the essential prerogatives of the ordinary independent businessman, the establishment, the dealer, or concessionaire will be considered an integral part of the related activities of the enterprise which grants the franchise, right, or concession. (S. Rept. 145, 87th Cong., 1st Sess., p. 42.)

Thus, there may be a number of different types of arrangements established in such cases, and the determination as to whether the arrangements create a larger "enterprise" will necessarily depend on all the facts. Some arrangements which do not create a larger enterprise and some which do are discussed in §§ 779.230–779.235.

§ 779.230 Franchise and other arrangements.

(a) There are many different and complex arrangements by which businesses may join to perform their activities for a common purpose. A general discussion will be found in Part 776 of this chapter. The quotation in § 779.229 from the Senate Report shows that Congress recognized that some franchise, lease, or other arrangements have the effect of creating a larger enterprise and whether they do or not depends on the facts. The facts may show that the arrangements are so restrictive as to deprive the individual establishment of those prerogatives which are the essential attributes of an independent business. (Compare Wirtz v. Lunsford, 404 F. 2d, 693 (C.A. 6).) An establishment through such arrangements may transfer sufficient "control" so that it becomes in effect a unit in a unified chain operation. In such cases the result of the arrangement will be to create a larger enterprise composed of the various segments, including the establishment which relinquishes its control.

(b) The term "franchise" is not susceptible of precise definition. The extent

to which a businessman relinquishes the control of his business or the extent to which a franchise results in the performance of the activities through unified operation or common control depends upon the terms of the contract and the other relationships between the parties. Ultimately the determination of the precise scope of such arrangements which result in creating larger enterprises rests with the courts.

§ 779.231 Franchise arrangements which do not create a larger enterprise.

(a) While it is clear that in every franchise a businessman surrenders some rights, it equally is clear that every franchise does not create a larger enterprise. In the ordinary case a franchise may involve no more than an agreement to sell the particular product of the one granting the franchise. It may also prohibit the sale of a competing product. Such arrangements, standing alone, do not deprive the individual businessman of his "control" so as to bring him into a larger enterprise with the one granting the franchise.

(b) The portion of the Senate Report quoted in the § 779.229 cites a "bona fide independent automobile dealer" as an example of such a franchise arrangement. (It is recognized that salesmen, mechanics, and partsmen primarily engaged in selling or servicing automobiles, trucks, trailers, farm implements, or aircraft, employed by nonmanufacturing establishments primarily engaged in the business of selling such vehicles to ultimate purchasers are specifically exempt from the overtime pay provisions under section 13(b)(10) of the Act. Section 779.372 discusses the exemption provided by section 13(b)(10) and its application whether or not the establishment meets the Act's definition of a retail or service establishment. The automobile dealer is used here only as an example of the type of franchise arrangement which, within the intent of the Congress, does not result in creating a larger enterprise.) The methods of operation of the independent automobile dealer are widely known. While he operates under a franchise to sell a particular make of automobile and also may be required to stock certain parts and to maintain specified service facilities, it is clear that he retains the control of the management of his business in those respects which characterize an independent businessman. He determines the prices for which he sells his merchandise. Even if prices are suggested by the manufacturer, it is well known that the dealer exercises wide discretion in this respect, free of control by the manufacturer or distributor. Also the automobile dealer retains control with respect to the management of his business, the determination of his employment practices, the operation of his various departments, and his business policies. The type of business in which he is engaged leaves him wide latitude for the exercise of his judgment and for decisions with respect to important aspects of his business upon which its success or failure depends. On the basis of these considerations, it is evident why the independent automobile dealer was cited as an example of the type of franchise which does not create a larger enterprise encompassing the dealer, the manufacturer or the distributor. Similar facts will lead to the same conclusion in other such arrangements.

§ 779.232 Franchise or other arrangements which create a larger enterprise.

(a) In other instances, franchise arrangements do result in bringing a dealer's business into a larger enterprise with the one granting the franchise. Where the franchise arrangement results in vesting control over the operations of the dealer's business in the one granting the franchise, the result is to place the dealer in a larger enterprise with the one granting the franchise. Where there are multiple units to which such franchises have been granted, the several dealers are considered to be subject to the common control of the one granting the franchise and all would be included in the same larger enterprise.

(b) It is not possible to lay down specific rules to determine whether a franchise or other agreement is such that a single enterprise results because all the facts and circumstances must be examined in the light of the definition of the term "enterprise" as discussed above in this subpart. However, the following example illustrates a franchising company and independently owned retail establishments which would constitute a single enterprise:

(1) The franchisor had developed a system of retail food store operations, built up a large volume of buying power, formulated rules and regulations for the successful operation of stores together constituting a system which for many years proved in practice to be of commercial value to the separate stores; and (2) the franchisor desired to extend its business through the operation of associated franchise stores, by responsible persons in various localities to act as limited agents, and to be parts of the system, to the end that the advantages of and the profits from the business could be enjoyed by those so associated as well as by the franchisor; and (3) the stores were operated under the franchise as part of the general system and connected with the home office of the franchisor from which general administrative jurisdiction was exercised over all franchised stores, wherever located; and (4) the stores operated under the franchise agreement were always subject to the general administrative jurisdiction of the franchisor and agreed to comply with it; and (5) the stores operated under the franchise agreed to install appliances, fixtures, signs, etc. according to plans and specifications provided by the franchisor and to purchase their merchandise through the franchisor except to the extent that the latter may authorize local purchase of certain items; and (6) the stores operated under the franchise agreed to participate in special promotions, sales and advertising as directed by the franchisor, to attend meetings of franchise store operators and to pay a fee to the franchisor at the rate of one-half of 1 percent of total gross sales each month for the privileges to them and the advantages and profits derived from operating a local unit of the franchisor's system; and (7) the franchisor under the franchise agreement had the right to place on a prohibited list any merchandise which it considered undesirable for sale in a franchise store, and the stores operated pursuant to the franchise agreed to immediately discontinue sale of any such blacklisted merchandise.

(c) It is clear from the facts and circumstances surrounding this franchise arrangement described in paragraph (b) of this section that the operators of the franchised establishments are denied the essential prerogatives of the ordinary independent businessman because of restrictions as to products, prices, profits and management. The last paragraph of the Senate Report quoted in § 779.229 makes clear that in such cases the franchised establishment, dealer, or concessionaire will be considered an integral part of the related activities of the enterprise which grants the franchise, right, or concession.

§ 779.233 Independent contractors performing work "for" an enterprise.

(a) The definition in section 3(r) specifically provides that the "enterprise" shall not include "the related activities performed for such enterprise by an independent contractor." This exclusion will apply where the related activities are performed "for" the enterprise and if such activities are performed by "an independent contractor." This provision is discussed generally in Part 776 of this chapter.

(b) The Senate Report in referring to this exception states as follows:

> It does not include the related activities performed for such an enterprise by an independent contractor, such as an independent accounting firm or sign service or advertising company, * * * (S. Rept. No. 145, 87th Cong., 1st Sess., p. 40).

The term "independent contractor" as used in section 3(r) has reference to an independent business which performs services for other businesses as an established part of its own business activities. The term "independent contractor" as used in 3(r) thus has reference to an independent business which is a separate "enterprise," and which deals in the ordinary course of its own business operations, at arms length, with the enterprises for which it performs services.

(c) There are many instances in industry where one business performs activities for separate businesses without becoming a part of a larger enterprise. In addition to the examples cited in the Report they may include such services as repairs, window cleaning, transportation, warehousing, collection services, and many others. The essential test in each case will be whether such services are performed "for" the enterprise by an independent, separate enterprise, or

whether the related activities are performed for a common purpose through unified operation or common control. In the latter case the activities will be considered performed "by" the enterprise, rather than "for" the enterprise, and will be a part of the enterprise. The distinction in the ordinary case will be readily apparent from the facts. In those cases where questions arise a determination must be made on the basis of all the facts in the light of the statute and the legislative history.

§ 779.234 Establishments whose only regular employees are the owner or members of his immediate family.

Section 3(s) provides that any "establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner" shall not be considered to be an "enterprise" as described in section 3(r) or a part of any other enterprise. Further the sales of such establishment are not included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of section 3(s). The term "other member of the immediate family of such owner" is considered to include relationships such as brother, sister, grandchildren, grandparents, and in-laws but not distant relatives from separate households. The 1966 amendments extended the exception to include family operated establishments which only employ persons other than members of the immediate family infrequently, irregularly, and sporadically. (See general discussion in Part 776 of this chapter.)

§ 779.235 Other "enterprises."

No attempt has been made in the discussion of the term "enterprise," to consider every possible situation which may, within the meaning of section 3(r), constitute an "enterprise" under the Act. The discussion is designed to explain and illustrate the application of the term in some cases; in others, the discussion may serve as a guide in applying the criteria of the definition to the particular fact situation. A more complete discussion is contained in Part 776 of this chapter.

Covered Enterprises

§ 779.236 In general.

Sections 779.201–779.235 discuss the various criteria for determining what business unit or units constitute an "enterprise" within the meaning of the Act. Sections 779.237–779.245 discuss the criteria for determining what constitutes a "covered enterprise" under the Act with respect to the conditions for coverage of those enterprises in which retail sale of goods or services are made. As explained in §§ 779.2–779.4, previously covered employment in retail and service enterprises will be subject to different monetary standards than newly covered employment in such enterprises until February 1, 1971. For this reason the enterprise coverage provisions of both the prior and the amended Act are discussed in the following sections of this subpart.

§ 779.237 Enterprise engaged in commerce or in the production of goods for commerce.

Under section 3(s) the "enterprise" to be covered must be an "enterprise engaged in commerce or in the production of goods for commerce." This is defined in section 3(s) as follows:

> "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, including employees handling, selling or otherwise working on goods that have been moved in or produced for commerce by any person * * *.

In order for an enterprise to come within the coverage of the Act, it must, therefore, be established that the enterprise has some employees who are:

(a) Engaged in commerce or in the production of goods for commerce, including

(b) Employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person.

The legislative history of the 1966 amendments does not indicate a difference between the meaning of the above wording and the wording used in the prior Act. (See § 779.22.) For a complete discussion of the employees who come within the quoted language see Subpart B of the Interpretative Bulletin on general coverage, Part 776 of this chapter.

§ 779.238 Engagement in described activities determined on annual basis.

As set forth in the preceding section an enterprise to be a "covered enterprise" must have at least some employees engaged in certain described activities. This requirement will be determined on an annual basis in order to give full effect to the intent of Congress. Thus, it is not necessary that the enterprise have two or more employees engaged in the named activities every week. An enterprise described in section 3(s) (1) or (5) of the prior Act or in section 3(s) (1) of the Act as it was amended in 1966 will be considered to have employees engaged in commerce or in the production of goods for commerce, including the handling, selling or otherwise working on goods that have been moved in or produced for commerce by any person, if during the annual period which it uses in calculating its annual sales for purposes of the other conditions of these sections, it regularly and recurrently has at least two or more employes engaged in such activities. On the other hand, it is plain that an enterprise that has employees engaged in such activities only in isolated or sporadic occasions, will not meet this condition.

§ 779.239 Meaning of "engaged in commerce or in the production of goods for commerce."

The term "engaged in commerce or in the production of goods for commerce," as used in section 3(s) of the Act in reference to employees who are so engaged is the same as the term which has been used in the Act for many years. The statutory definitions of these terms are set forth in §§ 779.12–779.16. The interpretative bulletin on general coverage (Part 776 of this chapter) contains the Divisions' interpretations as to which employees are "engaged in commerce or in the production of goods for commerce." These interpretations are equally applicable under section 3(s) in determining which employees are "engaged in commerce or in the production of goods for commerce" within the meaning of this section. A brief discussion of the guiding principles in determining which employees of retail or service establishments are "engaged in commerce or in the production of goods for commerce" is set forth in Subpart B of this part.

Employees Handling, Selling, or Otherwise Working on Goods That Have Been Moved in or Produced for Commerce by Any Person

§ 779.240 Employees "handling * * * or otherwise working on goods."

(a) *"Goods" upon which the described activities are performed.* Employees will be considered to be handling, selling, or otherwise working on goods within the meaning of section 3(s) if they engage in the described activities on "goods" which "have been moved in or produced for commerce by any person." They may be handling or working on such goods which the enterprise does not sell. The term "goods" is defined in section 3(i) of the Act. The definition is explained in § 779.107 and discussed comprehensively in Part 776 of this chapter. As defined in section 3(i) of the Act, the term includes any part or ingredient of "goods" and, in general, includes "articles or subjects of commerce of any character." Thus the term "goods," as used in section 3(s), includes all goods which have been moved in or produced for commerce, such as stock-in-trade, or raw materials that have been moved in or produced for commerce.

(b) *"Handling * * * or otherwise working on goods."* The term "handling * * * or otherwise working on goods" used in section 3(s) is substantially the same as the term used since 1938 in section 3(j) of the Act. Both terms will therefore be considered to have essentially the same meaning. (See Part 776 of this chapter, the interpretative bulletin on the general coverage of the Act.) Thus, the activities encompassed in the term "handling or in any other manner working on goods" in section 3(s) are the same as the activities, encompassed in the similar term in section 3(j), by which goods are "produced" within the meaning of the Act. In general, the term "handling * * * or otherwise working on goods" includes employees who sort, screen, grade, store, pack, label, address, transport, deliver, print, type, or otherwise handle or work on the goods. The same will be true of employees who handle or work on "any part or ingredient of the goods" referred to in the discussion of the term "goods" in § 779.107.

An employee will be considered engaged in "handling * * * or otherwise working on goods," within the meaning of section 3(s), only if he performs the described activities on goods that "have been moved in or produced for commerce by any person." This requirement is discussed in §§ 779.242 and 779.243.

§ 779.241 Selling.

The statutory definition of the term "sale" or "sell" is quoted in § 779.15. As long as the employee in any way participates in the sale of the goods he will be considered to be "selling" the goods, whether he physically handles them or not. Thus, if the employee performs any work that, in a practical sense is an essential part of consummating the "sale" of the particular goods, he will be considered to be "selling" the goods. "Selling" goods, under section 3(s) has reference only to goods which "have been moved in or produced for commerce by any person," as discussed in §§ 779.242 and 779.243.

§ 779.242 Goods that "have been moved in" commerce.

For the purpose of section 3(s), goods will be considered to "have been moved * * * in commerce" when they have moved across State lines before they are handled, sold, or otherwise worked on by the employees. It is immaterial in such a case that the goods may have "come to rest" within the meaning of the term "in commerce" as interpreted in other respects, before they are handled, sold, or otherwise worked on by the employees in the enterprise. Such movement in commerce may take place before they have reached the enterprise, or within the enterprise, such as from a warehouse of the enterprise in one State to a retail store of the same enterprise located in another State. Thus, employees will be considered to be "handling, selling, or otherwise working on goods that have been moved in * * * commerce" where they are engaged in the described activities on "goods" that have moved across State lines at any time in the course of business, such as from the manufacturer to the distributor, or to the "enterprise," or from one establishment to another within the "enterprise." See the general discussion in Part 776 of this chapter.

§ 779.243 Goods that have been "produced for commerce by any person."

An employee will be considered to be handling, selling, or otherwise working on goods that have been "produced for commerce by any person" within the meaning of section 3(s), if he is performing the described activities with respect to goods which have been "produced for commerce" within the meaning of the Act. The term "produced" is defined in section 3(j) of the Act and, as explained above, has a well-established meaning under the existing law. (See § 779.104 and Part 776 of this chapter.) The word as it is used in the context of the phrase "goods * * * produced for commerce by any person" in section 3(s) has the same meaning as in 3(j). Therefore, where goods are considered "produced for commerce" within the meaning of section 3(j) of the Act they also will be considered "produced for commerce" within the meaning of section 3(s). A discussion of when goods are produced for commerce within the meaning of section 3(j) is contained in § 779.108. Of course, within the meaning of section 3(s), the goods will be considered "produced for commerce" when they are so produced "by any person."

Covered Retail Enterprise

§ 779.244 "Covered enterprises" of interest to retailers of goods or services.

Retailers of goods or services are primarily concerned with the enterprises described in sections 3(s)(1) and 3(s)(5) of the prior Act and section 3(s)(1) of the Act as amended in 1966. Although section 3(s)(1) of the prior Act (under the 1961 amendments) had exclusive application to the retail and service industry, section 3(s)(1) of the Act as amended in 1966 may apply to any enterprise. This part is concerned only with retail or service establishments and enterprises. Enterprises described in clauses (2), (3), and (4) of section 3(s) are discussed herein only with respect to the application to them of provisions relating to retail or service establishments. Coverage of such enterprises and the application of section 3(s)(1) of the amended Act to enterprises generally are discussed in Part 776 of this chapter. The statutory definitions of enterprises of interest to retailers under the prior Act and the Act as amended in 1966 are quoted in § 779.22.

§ 779.245 Conditions for coverage of retail or service enterprises.

(a) Retail or service enterprises may be covered under section 3(s)(1) of the prior Act or section 3(s)(1) of the amended Act although the latter is not limited to retail or service enterprises. A retail or service enterprise will be a covered enterprise under section 3(s)(1) of the amended Act if both the following conditions are met:

(1) The enterprise is "an enterprise engaged in commerce or in the production of goods for commerce." This requirement, which is discussed in §§ 779.237–779.243, applies to all covered enterprises under the provisions of both the prior and the amended Act; and,

(2) During the period February 1, 1967, through January 31, 1969, the enterprise has an annual gross volume of sales made or business done, exclusive of excise taxes at the retail level which are separately stated, of at least $500,000; or on and after February 1, 1969, the enterprise has an annual gross volume of sales made or business done of at least $250,000, exclusive of excise taxes at the retail level which are separately stated.

(b) A retail or service enterprise will be covered under section 3(s)(1) of the Act prior to the amendments if all four of the following conditions are met:

(1) The enterprise is "an enterprise engaged in commerce or in the production of goods for commerce" as explained above in paragraph (a)(1) of this section and,

(2) The enterprise has one or more "retail or service establishments" (the statutory definition of the term "retail or service establishment" is contained in § 779.24 and discussed in Subpart D of this part) and,

(3) The enterprise has an annual gross volume of sales of $1 million or more, exclusive of excise taxes at the retail level which are separately stated and,

(4) The enterprise "purchases or receives goods for resale that move or have moved across State lines (not in deliveries from the reselling establishment) which amount in total annual volume to $250,000 or more." (This requirement is discussed in §§ 779.246–779.253.)

(c) §§ 779.258–779.260 discuss the meaning of "annual gross volume of sales made or business done" and §§ 779.261–779.264 discuss what excise taxes may be excluded from the annual gross volume. §§ 779.265–779.269 discuss the method of computing the annual gross volume where it is necessary to determine monetary obligations to employees under the Act.

Interstate Inflow Test Under Prior Act

§ 779.246 Inflow test under section 3(s)(1) of the Act prior to 1966 amendments.

To come within the scope of section 3(s)(1) of the prior Act, the enterprise, in addition to the other conditions, must purchase or receive goods for resale that move or have moved across State lines (not in deliveries from the reselling establishment) which amount in total annual volume to $250,000 or more. To meet this condition, it must be shown that (a) the enterprise purchases or receives goods for resale (§ 779.248), (b) that such goods move or have moved across State lines (§ 779.249), and (c) that such purchases and receipts amount in total annual volume to $250,000 or more (§ 779.253). Enterprises which do not meet this test may be covered under section 3(s)(1) of the present Act, which contains no interstate inflow requirement.

§ 779.247 "Goods" defined.

The term "goods" as used in section 3(s) of the prior and amended Act is defined in section 3(i) of the Act. The statutory definition is quoted in § 779.14, and is discussed in detail in Part 776 of this chapter.

§ 779.248 Purchase or receive "goods for resale."

(a) Goods will be considered purchased or received "for resale" for purposes of the inflow test contained in section 3(s)(1) of the prior Act if they are purchased or received with the intention of being resold. This includes goods, such as stock in trade which is purchased or received by the enterprise for resale in the ordinary course of business. It does not include machinery, equipment, supplies, and other goods which the enterprise purchases to use in conducting its business. This is true even if such capital

goods or other equipment, which the enterprise originally purchased for use in conducting its business, are at some later date actually resold. The distinction is to be found in whether the goods are purchased or received by the enterprise with the intention of reselling them in the same form or after further processing or manufacturing, or whether they are purchased with the intent of being consumed or used by the enterprise itself in the performance of its activities.

(b) Goods, such as raw materials or ingredients, are considered purchased or received by the enterprise "for resale," even if such goods are purchased or received for the purpose of being processed or used as parts or ingredients in the manufacture of other goods which the enterprise intends to sell. For example, where the enterprise purchases flour for use in baking bread or pastries for sale, the goods will be considered to have been purchased "for resale." It is immaterial whether the goods will be resold by the enterprise at retail or at wholesale.

§ 779.249 Goods which move or have moved across State lines.

In order to be included in the annual dollar volume for purposes of this test, the goods which the enterprise purchases or receives for resale must be goods that "move or have moved across the State lines." Goods which have not moved across State lines before they are resold by the enterprise will not be included. The movement to which the phrase "move or have moved" has reference is that movement which the goods follow in their journey to the enterprise or within the enterprise to the establishment which sells the goods. Thus, if goods have moved across State lines at some stage in the flow of trade before they are actually sold by the enterprise, they will be considered to have moved across State lines. It is not material that the goods may have "come to rest" at some time before they are purchased or received and sold by the enterprise; nor is it material that some time may have elapsed between the time the goods have moved across State lines and the time they are purchased or received and sold by the enterprise. It is sufficient if at any time such goods have moved across State lines in the ordinary course of trade before resale by the enterprise. Much of the goods purchased by retailers are procured from a local intrastate supplier. In many instances these goods may have been stored at the supplier's establishment for some time. However, as long as the particular goods purchased have moved across State lines at some stage in the flow of trade to the retailer, they would have to be included in determining whether or not the enterprise has purchased or received for resale such out-of-State goods amounting to $250,000.

§ 779.250 Goods that have not lost their out-of-State identity.

Goods which are purchased or received by the enterprise from within the State will be considered goods which "have moved across State lines" if they have previously been moved across State lines and have not lost their identity as out-of-State goods before they are purchased or received by the enterprise. Also goods which have been assembled within the State after they were moved across State lines but before they are purchased or received by the enterprise will still be regarded as goods which "have moved across State lines." Such goods are still identifiable as goods brought into the State. This is also true in certain cases where goods are processed to some extent without losing their identity as out-of-State goods. For example, out-of-State furniture or television sets which are put together within the State, or milk from outside the State which is pasteurized and bottled within the State, before being purchased or received by the enterprise, are goods which "have moved across State lines." They have already moved across State lines and they retain their out-of-State identity, despite the assembly or processing within the State.

§ 779.251 Goods that have lost their out-of-State identity.

(a) Goods which are purchased or received by the enterprise within the State will not be considered goods which have "moved across State lines" if the goods, although they came from outside the State, had been processed or manufactured so as to have lost their identity as out-of-State goods before they are purchased or received by the enterprise. This assumes, of course, that the goods so manufactured or processed do not move across State lines before they are sold by the enterprise. Thus where an enterprise buys bread baked within the State which does not move across State lines before it is resold by the enterprise, the bread is not "goods which have moved across State lines" even if the flour and other ingredients came from outside the State. The same conclusion will follow, under the same circumstances, where clothing is manufactured from out-of-State fabrics.

(b) In those cases where goods are composed in part of goods which have, and in part of goods which have not, moved across State lines, the entire product will be considered as goods which have moved across State lines, if, as a practical matter, it substantially consists of goods which are identifiable as out-of-State goods. Whether goods have been so changed as to have lost their out-of-State identity is a question which will depend upon all the facts in a particular case.

§ 779.252 Not in deliveries from the reselling establishment.

Goods which move across State lines only in the course of deliveries from the reselling establishment of the enterprise are not included as goods which "move or have moved across State lines." Thus, goods delivered by the enterprise to its customers outside of the State are not, for that reason, considered goods which "move or have moved across State lines." The purpose of the provision excepting "deliveries from the reselling establishment" is to limit the test to goods which flow into the enterprise and to exclude those goods which only cross State lines when they flow out of the enterprise as an incident of the sale of such goods by the enterprise. In other words, this is an inflow test and not an outflow test.

§ 779.253 What is included in computing the total annual inflow volume.

The goods which the establishment purchases or receives for resale that move or have moved across State lines must "amount in total annual volume to $250,000 or more." It will be noted that taxes are not excluded in measuring this annual dollar volume. Thus, the total cost to the enterprise of such goods will be included in calculating the $250,000. This will include all taxes and other charges which the enterprise must pay for such goods. Generally, all charges will be included in the invoice of the goods. But whether included in the invoice or not, the total amount which the enterprise is required to pay for such goods, including charges for transportation, insurance, delivery, storage and any other will be included in computing the $250,000. The dollar volume of the goods purchased or received by the enterprise is the "annual" volume. The method of calculating the annual dollar volume is explained in § 779.266.

The Gasoline Service Establishment Enterprise

§ 779.254 Summary of coverage and exemptions prior to and following the 1966 amendments.

The ordinary gasoline service establishment is a covered enterprise under the Act if it has an annual gross volume of sales made or business done of not less than $250,000 a year, exclusive of excise taxes at the retail level which are separately stated, and meets the other tests of section 3(s)(5) of the prior Act and section 3(s)(1) of the amended Act. Beginning February 1, 1969, enterprise coverage extends to any gasoline service establishment in an enterprise which has an annual gross volume in such amount, even if the establishment's annual gross volume is less. However, a gasoline service establishment with gross sales of less than $250,000, exclusive of excise taxes at the retail level which are separately stated, may qualify for the minimum wage and overtime pay exemption provided in section 13(a)(2) of the Act if it meets the requirements of that section. Section 779.313 summarizes the requirements. An overtime pay exemption, which was repealed by the 1966 amendments, existed until February 1, 1967, for employees of ordinary gasoline service establishments under the prior Act. Thus, nonexempt employees of a covered gasoline service establishment enterprise are subject to the minimum wage standards for previously covered employment and the overtime pay requirements for newly covered employment as listed below:

Minimum wage—	*Beginning*
$1.40 an hour	February 1, 1967.
$1.60 an hour	February 1, 1968 and thereafter.

Overtime pay after—
44 hours in a workweek—February 1, 1967.
42 hours in a workweek—February 1, 1968.
40 hours in a workweek—February 1, 1969 and thereafter.

The particular considerations affecting coverage and exemptions are discussed in subsequent sections. The statutory language contained in section 3(s)(5) of the prior Act and 3(s)(1) of the amended Act may be found in § 779.22.

§ 779.255 Meaning of "gasoline service establishment."

(a) A gasoline service station or establishment is one which is typically a physically separate place of business engaged primarily ("primarily" meaning 50 percent or more) in selling gasoline and lubricating oils to the general public at the station or establishment. It may also sell other merchandise or perform minor repair work as an incidental part of the business. (See S. Rept. 145, 87th Cong., first session, p. 32.) No difference in application of the terms "gasoline service establishment" and "gasoline service station" was intended by Congress (See Senate Report cited above) and both carry the same meaning.

(b) Under section 3(s)(5) of the prior Act and until February 1, 1969, under section 3(s)(1) of the amended Act, the covered enterprise is always a single establishment—a gasoline service establishment, even though such establishment may be a part of some larger enterprise for purposes of other provisions of the "enterprise" coverage of the new amendments. As noted above this term refers to what is commonly known as a gasoline service station, a separate "establishment." What constitutes a separate establishment is discussed in §§ 779.303–779.306. While receipts from incidental sales and services are included and counted in determining the establishment's annual gross volume of sales for purposes of enterprise coverage, the establishment's primary source of receipts must be from the sale of gasoline and lubricating oils. (See Senate Report cited above.) An establishment which derives the greater part of its income from the sales of goods other than gasoline or lubricating oils will not be considered a "gasoline service establishment." The mere fact that an establishment has a gasoline pump as an incidental part of other business activities in which it is principally engaged does not constitute it "a gasoline service establishment" within the meaning and for the purposes of these sections.

§ 779.256 Conditions for enterprise coverage of gasoline service establishments.

(a) The requirement that the enterprise must be "an enterprise engaged in commerce or in the production of goods for commerce" is discussed in §§ 779.237–779.243. Those sections explain which employees are engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person. In connection with the discussion in those sections as it concerns employes of gasoline service establishments, it should be noted that as a general rule such employees normally are "engaged in commerce or in the production of goods for commerce" within the meaning of the Act. For example, gasoline filling station employees servicing motor vehicles used in interstate transportation or in the production of goods for commerce have always been regarded as being "engaged in commerce or in the production of goods for commerce" within the meaning of the Act. Such employees will also be considered as engaged in handling, selling or otherwise working on goods that have been moved in or produced for commerce by any person, if the gasoline or lubricating oils or the other goods with respect to which they perform the described activities have come from outside the State in which the establishment is located.

(b) For periods before February 1, 1969, a gasoline service establishment was within the scope of the enterprise coverage provisions of the Act only if its annual gross volume of sales was not less than $250,000, exclusive of excise taxes at the retail level which are separately stated. Until such date, a gasoline service establishment which did not have such an annual gross volume of sales was not a covered enterprise, and enterprise coverage did not extend to it by virtue of the fact that it is an establishment of an enterprise which meets coverage tests of section 3(s). In determining whether the establishment has the requisite annual gross volume of sales the receipts from all sales of the establishment are included without limitation to the receipts from sales of gasoline and lubricating oil. In computing the annual gross volume of sales the gross receipts from all types of sales during a 12-month period are included. These gross receipts are measured by the price paid by the purchaser of the goods or services sold by the establishment (Sen. Rept. 1487, 89th Cong. second session p. 7). Thus, where the establishment sells gasoline for an oil company on commission, annual gross volume is based on the retail sale price and not on the smaller amount retained or received as commissions. A further discussion of what sales are included in the annual gross volume is contained in §§ 779.258–779.260.

(c) In computing the annual gross volume of sales, excise taxes at the retail level which are separately stated are not counted. A discussion of the excise taxes which may be excluded under this provision is contained in §§ 779.261–779.264. Whether the particular taxes are "excise taxes at the retail level" depends upon the facts in each case. If the taxes are "excise taxes at the retail level" they will be excludable only if they are "separately stated." Where a gasoline station posts a sign on or alongside the gasoline pumps indicating that a certain amount per gallon is for a specific excise tax, this will meet the requirement of being "separately stated". The method of calculating annual gross volume of sales is explained in greater detail in §§ 779.265–779.269.

§ 779.257 Exemption applicable to gasoline service establishments under the prior act.

Section 13(b)(8) of the prior Act (before the 1966 amendments) contained an exemption from the overtime pay requirements for "any employee of a gasoline service station". This exemption was applicable prior to February 1, 1967, without regard to the annual gross volume of sales of the gasoline service station by which the employee was employed. The removal of this exemption by the 1966 amendments brought nonexempt employees of covered gasoline service stations within the purview of the overtime requirements of the Act for the first time.

Annual Gross Volume of Sales Made or Business Done

§ 779.258 Sales made or business done.

The Senate Report on the 1966 amendments reaffirmed the intent to measure the "dollar volume of sales or business" including "the gross receipts or gross business" to determine whether an enterprise is covered. This concept was first expressed in the Senate Report on the 1961 amendments (S. Rept. No. 145, 87th Congress, first session, p. 38). The phrase "business done" added by the 1966 amendments to section 3(s) merely reflects with more clarity the economic test of business size expressed in the prior Act in terms of "annual gross volume of sales" and conforms the language of the Act with the Congressional view expressed in the legislative history of the 1961 amendments. Thus, the annual gross volume of an enterprise must include any business activity in which it engages which can be measured on a dollar basis irrespective of whether the enterprise is tested under the prior or amended Act. The Senate Report on the 1966 amendments states:

> The intent to measure the "dollar volume of sales or business" including the "gross receipts or gross business" in determining coverage of such an enterprise was expressed in the Senate report above cited at page 38. The addition of the term "business done" to the statutory language should make this intent abundantly plain for the future and remove any possible reason for misapprehension. The annual gross volume of sales made or business done by an enterprise, within the meaning of section 3(s), will thus continue to include both the gross dollar volume of the sales (as defined in sec. 3(k)) which it makes, as measured by the price paid by the purchaser for the property or service sold to him (exclusive of any excise taxes at the retail level which are separately stated), and the gross dollar volume of any other business activity in which the enterprise engages which can be similarly measured on a dollar basis. This would include, for example, such activity by an enterprise as making loans or renting or leasing property of any kind. (S. Rept. No. 1487, 89th Congress, second session, pp. 7–8.)

§ 779.259 What is included in annual gross volume.

(a) The annual gross volume of sales made or business done of an enterprise

consists of its gross receipts from all types of sales made and business done during a 12-month period. The gross volume of sales made or business done means the gross dollar volume (not limited to income) derived from all sales and business transactions including, for example, gross receipts from service, credit, or other similar charges. Credits for goods returned or exchanged and rebates and discounts, and the like, are not ordinarily included in the annual gross volume of sales or business. The gross volume of sales or business includes the receipts from sales made or business done by the retail or service establishments of the enterprise as well as the sales made or business done by any other establishments of the enterprise, exclusive of the internal transactions between them. Gross volume is measured by the price paid by the purchaser for the property or service sold to him, as stated in the Senate Committee Report (§ 779.258). It is not measured by profit on goods sold or commissions on sales made for others. The dollar value of sales or business of the entire enterprise in all establishments is added together to determine whether the applicable dollar test is met. The fact that one or more of the retail or service establishments of the enterprise may have less than $250,000 in annual dollar volume and may meet the other requirements for exemption from the pay provisions of the Act under section 13(a)(2), does not exclude the dollar volume of sales or business of that establishment from the annual gross volume of the enterprise. However, the dollar volume of an establishment derived from transactions with other establishments in the same enterprise does not ordinarily constitute part of the annual gross volume of the enterprise as a whole. The computation of the annual gross volume of sales or business of the enterprise is made "exclusive of excise taxes at the retail level which are separately stated". The taxes which may be excluded are discussed in §§ 779.261–779.264. The methods of calculating the annual gross volume of sales of an enterprise are set forth in §§ 779.265–779.269.

(b) In the ordinary case the functions of a leased department are controlled or unified in such a way that it is included in the establishment and therefore in the enterprise in which it is located, as discussed in § 779.225. The applicability of enterprise coverage and certain exemptions to such a leased department depends upon the enterprise coverage and the exemption status of the establishment in which the leased department is located. The annual gross volume of such a leased department is included in the annual gross volume of the establishment in which it is located as well as in the annual gross volume of the enterprise of which such establishment is a part.

(c) Likewise, where franchise or other arrangements result in the creation of a larger enterprise by means of operational restrictions so that the establishment, dealer, or concessionaire is an integral part of the related activities of the enterprise which grants the franchise, right, or concession, as discussed in §§ 779.229 and 779.232, it will follow that the annual gross volume of sales made or business done of such an enterprise includes the dollar volume of sales or business of each related establishment, dealer, or concessionaire.

§ 779.260 Trade-in allowances.

Where merchandise is taken in trade when a sale is made, the annual gross volume of sales or business will include the gross amount of the sale before deduction of the allowance on such trade-in merchandise. This is so even though an overallowance or excessive value is allowed on the trade-in merchandise. In turn, when the trade-in merchandise is sold the amount of the sale will be included in the annual gross volume.

Excise Taxes

§ 779.261 Statutory provision.

Sections 3(s)(1) and 13(a)(2) of the amended Act as well as sections 3(s)(1), 3(s)(2), 3(s)(5), and 13(a)(2)(iv) of the prior Act provide for the exclusion of "excise taxes at the retail level which are separately stated" in computing the gross annual volume of sales or business or the annual dollar volume of sales for purposes of certain of the provisions contained in those sections. The Senate Committee report states as follows with respect to this provision:

> * * * in determining whether the enterprise or establishment, as the case may be, has the requisite annual dollar volume of sales, excise taxes will not be counted if they are taxes that are collected at the retail level and are separately identified in the price charged the customer for the goods or services at the time of the sale. Excise taxes which are levied at the manufacturer's, wholesaler's, or other distributive level will not be excluded in calculating the dollar volume of sales nor will excise taxes be excluded in cases where the customer is charged a single price for the merchandise or services and the taxes are not separately identified when the sale is made. (S. Rept., 145, 87th Cong., first session, p. 39.)

In applying the above rules to determine annual gross volume of sales or business under section 3(s) or annual dollar volume of sales for purposes of the $250,000 test under section 13(a)(2), excise taxes which (a) are levied at the retail level and (b) are separately stated and identified in the charge to the customer at the time of sale need not be included in the calculation of the gross or dollar volume of sales. Excise taxes which are levied at the manufacturer's, wholesaler's or other distributive level will not, ordinarily, be excluded in calculating the volume of sales, nor will excise taxes, even if levied at the retail level, be excluded in cases where the customer is charged a single price for the merchandise or services and the taxes are not separately identified when the sale is made. Excise taxes will be excludable whether they are levied by the Federal, State, or local government provided that the tax is "levied at the retail level" and "separately stated".

§ 779.262 Excise taxes at the retail level.

(a) Federal excise taxes are imposed at the retail level on highway vehicle fuels other than gasoline under the provisions of 26 U.S.C. 4041. Such excise taxes are levied at the retail level on any liquid fuel sold for use, or used in a diesel-powered highway vehicle. A similar tax is imposed on the sale of such special motor fuels as benzene and liquefied petroleum gas when used as a motor fuel. To the extent that these taxes are separately stated to the customer, they may be excluded from gross volume of sales. The extent to which State taxes are levied at the retail level, and thus excludable when seperately stated, depends, of course, upon the law of the State concerned. However, as a general rule, State, county, and municipal sales taxes are levied at the retail level, and to the extent that they are separately stated, may be excluded. All State excise taxes on gasoline are, for purposes of section 3(s), taxes levied at the retail level, which, if separately stated, may be excluded.

(b) The circumstances surrounding the levying and collection of the Federal excise taxes on gasoline, tires, and inner tubes reflect that, although they are listed under the title of "Manufacturers Excise Taxes," they are, in practical operation, taxes "at the retail level." Federal excise taxes on gasoline, tires, and inner tubes, when "separately stated," may therefore be excluded in computing the annual gross volume of an enterprise for the purpose of determining coverage under section 3(s)(1) of the Act and section 13(a)(2) for purposes of applying the $250,000 test for determining the retail and service establishment exemption of an establishment in a covered enterprise.

§ 779.263 Excise taxes not at the retail level.

There are also a wide variety of taxes levied at the manufacturer's or distributor's level and not at the retail level. It should be noted, however, that the circumstances surrounding the levying and collection of taxes must be carefully considered. The facts concerning the levying and collection of Federal excise taxes on alcoholic beverages and tobacco reflect that such taxes are upon the manufacture of these products and that they are neither levied nor collected at the retail level and thus are not excludable. However, in some cases the circumstances may reflect that despite the fact that such taxes may be levied upon the manufacturer or distributor, nevertheless they may be, in practical operation, taxes at the retail level and may be so regarded for the purpose of this provision.

§ 779.264 Excise taxes separately stated.

A tax is separately stated where it clearly appears that it has been added to the sales price as a separate, identifiable amount, even though there was no invoice or sales slip. In the absence of a sales slip or invoice, the amount of the tax may either be separately stated orally at the time of sale, or visually by means of a poster or other sign reasonably designed to inform the purchaser that the amount of the tax, either as a stated sum per unit or measured by the gross

amount of the sale, or as a percentage of the price, is included in the sales price. A sign on a gasoline pump indicating in cents per gallon the amount of State and Federal highway fuel excise taxes is an example of "separately stated" taxes.

COMPUTING THE ANNUAL VOLUME

§ 779.265 Basis for making computations.

The annual gross dollar volume of sales made or business done of an enterprise or establishment consists of the gross receipts from all of its sales or its volume of business done during a 12-month period. Where a computation of the annual gross volume is necessary to determine monetary obligations to employees under the Act whether in an enterprise which has one or more retail or service establishments, or in any establishment in such enterprise, or in any gasoline service establishment, it must be based on the most recent prior experience which it is practicable to use. This was recognized in the Congress when the legislation was under consideration. (S. Rept. No. 145, 87th Cong., first session, p. 38 discusses in detail the calculation of the annual gross volume.) When gross receipts of an enterprise show that the annual dollar volume of sales made or business done meets the statutory tests for coverage and nonexemption, the employer must comply with the Act's monetary provisions from that time on or until such time as the tests are not met. (See § 779.266.)

§ 779.266 Methods of computing annual volume of sales or business.

(a) No computations of annual gross dollar volume are necessary to determine coverage or exemption in those enterprises in which the gross receipts regularly derived each year from the business are known by the employers to be substantially in excess or substantially under the minimum dollar volume specified in the applicable provision of the Act. Also, where the enterprise or establishment, during the portion of its current income tax year up to the end of the current payroll period, has already had a gross volume of sales or business in excess of the dollar amount specified in the statute, it is plain that its annual dollar volume currently is in excess of the statutory amount, and that the Act applies accordingly. The computation described in paragraph (b) of this section, therefore need not be made. Nor is it required where the enterprise or establishment has not yet in such current year exceeded the statutory amount in its gross volume of sales or business, if it has had, in the most recently ended year used by it for income tax purposes, a gross volume of sales made and business done in excess of the amount specified in the Act. In such event, the enterprise or establishment will be deemed to have an annual gross volume in excess of the statutory amount, unless the employer establishes, through use of the method set forth in paragraph (b) of this section, an annual gross volume of sales made or business done which is less than the amount specified in the Act. The method described in paragraph (b) of this section shall be used, as intended by the Congress (see S. Rept. 145, 87th Cong. first session, p. 38), for computation of annual dollar volume in all cases when such a computation becomes necessary in order to determine the applicability of provisions of the Act.

(b) In order to determine, when there may be doubt, whether an enterprise or establishment has an annual gross volume of sales made or business done in excess of the amount specified in the statute and analysis will be made at the beginning of each quarter-year so that the employer will know whether or not the dollar volume tests have been met for the purpose of complying with the law in the workweeks ending in the current quarter-year. The total of the gross receipts from all its sales or business during a 12-month period which immediately precedes the quarter-year being tested will be the basis for analysis. When it is necessary to make a determination for enterprises or establishments which are operated on a calendar year basis for income tax or sales or other accounting purposes the quarter-year periods tested will coincide with the calendar quarters (January 1–March 31; April 1–June 30; July 1–September 30; October 1–December 31). On the other hand, where enterprises or establishments are operated on a fiscal year basis, which consists of an annual period different from the calendar year, the four quarters of the fiscal period will be used in lieu of calendar quarters in computing the annual volume. Once either basis has been adopted it must be used in making subsequent calculations. The sales records maintained as a result of the accounting procedures used for tax or other business purposes may be utilized in computing the annual dollar volume provided the same accounting procedure is used consistently and that such procedure accurately reflects the annual volume of sales or business.

§ 779.267 Fluctuations in annual gross volume affecting enterprise coverage and establishment exemptions.

It is possible that the analysis performed at the beginning of each quarter to determine the applicability of the monetary provisions of the Act may reveal changes in the annual gross volume or other determinative factors which result in the enterprise or establishment meeting or ceasing to meet one or more of the tests for enterprise coverage or establishment exemption. Thus, enterprise coverage may result where the annual volume increases from an amount under to an amount over $250,000. Also, an enterprise having an annual gross volume of more than $1 million and meeting the requirements for a covered retail enterprise under the prior Act on the basis of previous sales analyses may fall below $1 million when the annual gross volume is computed at the beginning of the quarter being tested and as a result qualify only as a newly covered enterprise for the current quarter under the amended Act. Similarly, an enterprise previously subject to new coverage pay standards, having an annual gross volume of more than $250,000 but less than $1 million on the basis of previous sales analyses, may increase its annual gross volume to $1 million or more when recomputed at the beginning of the quarter being tested. It will thus become for the current quarter an enterprise in which employees are subject to the pay standards for employment covered under the Act prior to the amendments, provided that it meets the other conditions as discussed in § 779.245.

§ 779.268 Grace period of 1 month for computation.

Where it is not practicable to compute the annual gross volume of sales or business under paragraph (b) of § 779.266 in time to determine obligations under the Act for the current quarter, an enterprise or establishment may use a 1-month grace period. If this 1-month grace period is used, the computations made under this section will determine its obligations under the Act for the 3-month period commencing 1 month after the end of the preceding calendar or fiscal quarter. Once adopted the same basis must be used for each successive 3-month period.

§ 779.269 Computations for a new business.

When a new business is commenced the employer will necessarily be unable for a time to determine its annual dollar volume on the basis of a full 12-month period as described above. In many cases, it is readily apparent that the enterprise or establishment will or will not have the requisite annual dollar volume specified in the Act. For example, where the new business consists of a large department store, or a supermarket, it may be clear from the outset that the business will meet the annual dollar volume tests so as to be subject to the requirements of the Act. In other cases, where doubt exists, the gross receipts of the new business during the first quarter year in which it has been in operation will be taken as representative of its annual dollar volume, in applying the annual volume tests of sections 3(s) and 13(a)(2), for purposes of determining its obligations under the Act in workweeks falling in the following quarter year period. Similarly, for purposes of determining its obligations under the Act in workweeks falling within ensuing quarter year periods, the gross receipts of the new business for the completed quarter year periods will be taken as representative of its annual dollar volume in applying the annual volume tests of the Act. After the new business has been in operation for a full calendar or fiscal year, the analysis can be made by the method described in paragraph (b) of § 779.266 with use of the grace period described in § 779.268, if necessary.

Subpart D—Exemptions for Certain Retail or Service Establishments

GENERAL PRINCIPLES

§ 779.300 Purpose of subpart.

Subpart C of this part has discussed the various criteria for determining coverage under the Act of employers and employees in enterprises and establishments that make retail sales of goods and services. This subpart deals primarily with the exemptions from the

Act's minimum wage and overtime provisions found in section 13(a) (2), (4), (11), and 13(b)(18) for employees of retail or service establishments. Also discussed are some exemptions for special categories of establishments engaged in retailing goods or services, which do not require for exemption that the particular establishment be a retail or service establishment as defined in the Act. If all the requirements set forth in any of these exemptions are met, to the extent provided therein the employer is relieved from complying with the minimum wage and/or overtime provisions of the Act even though his employees are engaged in interstate or foreign commerce or in the production of goods for such commerce or employed in covered enterprises.

§ 779.301 Statutory provisions.

(a) Section 13(a) (2), (4), (11), and section 13(b)(18) of the Act, as amended, grant exemptions from the minimum wage provisions of section 6 and the maximum hours provisions of section 7 as follows:

(1) Section 13(a)(2) exempts from minimum wages and overtime pay.

Any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4)), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s) or such establishment has an annual dollar volume of sales which is less than $250,000 (exclusive of excise taxes at the retail level which are separately stated). A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

(2) Section 13(a)(4) exempts from minimum wages and overtime pay:

Any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located.

(3) Section 13(a)(11) exempts from minimum wages and overtime pay:

Any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under clause (2) of this subsection with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month.

(4) Section 13(b)(18) exempts from overtime pay only:

Any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs.

(b) Sections 13(a) (2), (4), (13), (19), and (20) of the prior Act granted exemptions from both the minimum wage provisions of section 6 and the maximum hours provisions of section 7 as follows:

(1) Section 13(a)(2) exempted:

Any employee employed by any retail or service establishment, more than 50 per centum of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, if such establishment—

(i) Is not in an enterprise described in section 3(s), or

(ii) Is in such an enterprise and is a hotel, motel or restaurant, or motion picture theater; or is an amusement or recreational establishment that operates on a seasonal basis, or

(iii) Is in such an enterprise and is a hospital, or an institution which is primarily engaged in the care of the sick, the aged, the mentally ill or defective, residing on the premises of such institution, or a school for physically or mentally handicapped on gifted children, or

(iv) Is in such an enterprise and has an annual dollar volume of sales (exclusive of excise taxes at the retail level which are separately stated) which is less than $250,000.

A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or both) is not for resale and is recognized as retail sales or services in the particular industry.

(2) Section 13(a)(4) provided the same exemption as it now does.

(3) Section 13(a)(13) provided the same exemption as section 13(a)(11) of the present Act.

(4) Section 13(a)(19) exempted:

"Any employee of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks, or farm implements."

(5) Section 13(a)(20) exempted those employees who are now exempt from the overtime provisions only under section 13(b)(18) of the present Act.

(c) Employees who were exempt from the minimum wage and overtie pay requirements under a provision of the prior Act set forth in paragraph (b) above, but are no longer exempt from one or both of such requirements under the present Act must be paid minimum wages or overtime pay, as the case may be, in accordance with the pay standards provided for newly covered employment, in any workweek when they perform work within the individual or enterprise coverage of the Act.

"Establishment" Basis of Exemptions

§ 779.302 Exemptions depend on character of establishment.

Some exemptions depend on the character of the establishment by which an employee is employed. These include the "retail or service establishment" exemptions in sections 13(a) (2), (4), and (11) and the exemptions available to the establishments of the character specified in sections 13(a) (3), (9), and 13(b)(8) (first part). Therefore, if the establishment meets the tests enumerated in these sections, employees "employed by" that establishment are generally exempt from sections 6 and 7. (See §§ 779.307 to 779.309 discussing "employed by.") Other exemptions establish two criteria, the character of the establishment and the nature of the conditions of the employment of the particular employee. Such exemptions are set forth in section 13(b)(8) (second part), and section 13(b)(18) and (19). To determine whether the exemptions of these sections apply it is necessary to determine both that the establishment meets the enumerated tests and that the employee is engaged in the enumerated activities or employed under the conditions specified. Thus, under section 13(b)(18) some of the employees of a given employer may be exempt from the overtime pay requirements (but not the minimum wage) of the Act, while others may not.

§ 779.303 "Establishment" defined; distinguished from "enterprise" and "business."

As previously stated in § 779.23, the term "establishment" as used in the Act means a distinct physical place of business. The "enterprise," by reason of the definition contained in section 3(r) of the Act and the tests enumerated in section 3(s) of the Act, may be composed of a single establishment. The term "establishment," however, is not synonymous with the words "business" or "enterprise" when those terms are used to describe multiunit operations. In such a multiunit operation some of the establishments may qualify for exemption, others may not. For example, a manufacturer may operate a plant for production of its goods, a separate warehouse for storage and distribution, and several stores from which its products are sold. Each such physically separate place of business is a separate establishment. In the case of chain store systems, branch stores, groups of independent stores organized to carry on business in a manner similar to chain store systems, and retail outlets operated by manufacturing or distributing concerns, each separate place of business ordinarily is a separate establishment.

§ 779.304 Illustrations of a single establishment.

(a) The unit store ordinarily will constitute the establishment contemplated by the exemptions. The mere fact that a store is departmentalized will not alter the rule. For example, the typical large department store carries a wide variety of lines which ordinarily are segregated or departmentalized not only as to location within the store, but also as to operation and records. Where such departments are operated as integral parts of a unit, the departmentalized unit taken as a whole ordinarily will be considered to be the establishment contemplated by the exemptions, even if there is diversity of ownership of some of the departments, such as leased departments.

(b) Some stores, such as bakery or tailor shops, may produce goods in a back room and sell them in the adjoining front room. In such cases if there is unity of ownership and if the back room and the front room are operated by the employer as a single store, the entire premises ordinarily will be considered to be a single establishment for purposes of the tests of the exemption, notwithstanding the fact that the two functions of making and of selling the goods, are separated by a partition or a wall. (See H. Mgrs. St., 1949, p. 27.)

§ 779.305 Separate establishments on the same premises.

Although, as stated in the preceding section, two or more departments of a business may constitute a single establishment, two or more physically separated portions of a business though located on the same premises, and even under the same roof in some circumstances may constitute more than one establishment for purposes of the exemptions. In order to effect such a result physical separation is a prerequisite. In addition, the physically separated portions of the business also must be engaged in operations which are functionally separated from each other. Since there is no such functional separation between activities of selling goods or services at retail, the Act recognizes that food service activities of such retail or service establishments as drugstores, department stores, and bowling alleys are not performed by a separate establishment which "is" a "restaurant" so as to qualify for the overtime exemption provided in section 13(b)(8) and accordingly provides a separate overtime exemption in section 13(b)(18) for employees employed by any "retail or service establishment" in such activities in order to equalize the application of the Act between restaurant establishments and retail or service establishments of other kinds which frequently compete with them for customers and labor. (See Sen. Rept. 1487, 89th Cong. first session, p. 32.) For retailing and other functionally unrelated activities performed on the same premises to be considered as performed in separate establishments, a distinct physical place of business engaged in each category of activities must be identifiable. The retail portion of the business must be distinct and separate from and unrelated to that portion of the business devoted to other activities. For example, a firm may engage in selling groceries at retail and at the same place of business be engaged in an unrelated activity, such as the incubation of chicks for sale to growers. The retail grocery portion of the business could be considered as a separate establishment for purposes of the exemption, if it is physically segregated from the hatchery and has separate employees and separate records. In other words, the retail portion of an establishment would be considered a separate establishment from the unrelated portion for the purpose of the exemption if (a) it is physically separated from the other activities; and (b) it is functionally operated as a separate unit having separate records, and separate bookkeeping; and (c) there is no interchange of employees between the units. The requirement that there be no interchange of employees between the units does not mean that an employee of one unit may not occasionally, when circumstances require it, render some help in the other units or that one employee of one unit may not be transferred to work in the other unit. The requirement has reference to the indiscriminate use of the employee in both units without regard to the segregated functions of such units.

§ 779.306 Leased departments not separate establishments.

It does not follow from the principles discussed in § 779.305 that leased departments engaged in the retail sale of goods or services in a departmentalized store are separate establishments. To the contrary, it is only in rare instances that such leased departments would be separate establishments for purposes of the exemptions. For example, take a situation where the departmentalized retail store, having leased departments, controls the space location, determines the type of goods that may be sold, determines the pricing policy, bills the customers, passes on customers' credit, receives payments due, handles complaints, determines the personnel policies, and performs other functions as well. In such situations the leased department is an integral part of the retail store and considered to be such by the customers. It is clear that such departments are not separate establishments but rather a part of the retail store establishment and will be considered as such for purposes of the exemptions. The same result may follow in the case of leased departments engaged in the retail sale of goods or services in a departmentalized store where all or most of the departments are leased or otherwise individually owned, but which operate under one common trade name and hold themselves out to the public as one integrated business unit.

§ 779.307 Meaning and scope of "employed by" and "employee of."

Section 13(a)(2) as originally enacted in 1938 exempted any employee "engaged in" any retail or service establishment. The 1949 amendments to that section, however, as contained in section 13(a)(2) and (4) exempted any employee "employed by" any establishment described in those exemptions. The 1961 and 1966 amendments retained the "employed by" language of these exemptions. Thus, where it is found that any of those exemptions apply to an establishment owned or operated by the employer the employees "employed by" that establishment of the employer are exempt from the minimum wage and overtime provisions of the Act without regard to whether such employees perform their activities inside or outside the establishment. Thus, such employees as collectors, repair and service men, outside salesmen, merchandise buyers, consumer survey and promotion workers, and delivery men actually employed by an exempt retail or service establishment are exempt from the minimum wage and overtime provisions of the Act although they may perform the work of the establishment away from the premises. As used in section 13 of the Act, the phrases "employee of" and "employed by" are synonymous.

§ 779.308 Employed within scope of exempt business.

In order to meet the requirement of actual employment "by" the establishment, an employee, whether performing his duties inside or outside the establishment, must be employed by his employer in the work of the exempt establishment itself in activities within the scope of its exempt business. (See Davis v. Goodman Lumber Co., 133 F. 2d 52 (CA–4) (holding section 13(a)(2) exemption inapplicable to employees working in manufacturing phase of employer's retail establishment); Wessling v. Carroll Gas Co., 266 F. Supp. 795 (N.D. Iowa); Oliveira v. Basteiro, 18 WH Cases 668 (S.D. Texas). See also, Northwest Airlines v. Jackson, 185 F. 2d 74 (CA–8); Walling v. Connecticut Co., 154 F. 2d 522 (CA–2) certiorari denied, 329 U.S. 667; and Wabash Radio Corp. v. Walling, 162 F. 2d 391 (CA–6).)

§ 779.309 Employed "in" but not "by".

Since the exemptions by their terms apply to the employees "employed by" the exempt establishment, it follows that those exemptions will not extend to other employees who, although actually working in the establishment and even though employed by the same person who is the employer of all under section 3(d) of the Act, are not "employed by" the exempt establishment. Thus, traveling auditors, manufacturers' demonstrators, display-window arrangers, sales instructors, etc., who are not "employed by" an exempt establishment in which they work will not be exempt merely because they happen to be working in such an exempt establishment, whether or not they work for the same employer. (Mitchell v. Kroger Co., 248 F. 2d 935 (CA–8).) For example, if the manufacturer sends one of his employees to demonstrate to the public in a customer's exempt retail establishment the products which he has manufactured, the employee will not be considered exempt under section 13(a)(2) since he is not employed by the retail establishment but by the manufacturer. The same would be true of an employee of the central offices of a chain-store organization who performs work for the central organization on the premises of an exempt retail outlet of the chain (Mitchell v. Kroger Co., supra.)

§ 779.310 Employees of employers operating multi-unit businesses.

(a) Where the employer's business operations are conducted in more than one establishment, as in the various units of a chain-store system or where branch establishments are operated in conjunction with a main store, the employer is entitled to exemption under section 13 (a) (2) or (4) for those of his employees

in such business operations, and those only, who are "employed by" an establishment which qualifies for exemption under the statutory tests. For example, the central office or central warehouse of a chain-store operation even though located on the same premises as one of the chain's retail stores would be considered a separate establishment for purposes of the exemption, if it is physically separated for the area in which the retail operations are carried on and has separate employees and records. (Goldberg v. Sunshine Department Stores, 15 W.H. Cases 169 (CA-5), Mitchell v. Miller Drugs, Inc., 255 F. 2d 574 (CA-1); Walling v. Goldblatt Bros., 152 F. 2d 475 (CA-7).)

(b) Under this test, employees in the warehouse and central offices of chain-store systems have not been exempt prior to, and their nonexempt status is not changed by, the 1961 amendments. Typically, chain-store organizations are merchandising institutions of a hybrid retail-wholesale nature, whose wholesale functions are performed through their warehouses and central offices and similar establishments which distribute to or serve the various retail outlets. Such central establishments clearly cannot qualify as exempt establishments. (A. H. Phillips, Inc. v. Walling, 324 U.S. 490; Mitchell v. C & P Stores, 286 F. 2d 109 (CA-5).) The employees working there are not "employed by" any single exempt establishment of the business; they are, rather, "employed by" an organization of a number of such establishments. Their status obviously differs from that of employees of an exempt retail or service establishment, working in a warehouse operated by and servicing such establishment exclusively, who are exempt as employees "employed by" the exempt establishment regardless of whether or not the warehouse operation is conducted in the same building as the selling or servicing activities.

§ 779.311 Employees working in more than one establishment of same employer.

(a) An employee who is employed by an establishment which qualifies as an exempt establishment under section 13(a)(2) or (4) is exempt from the minimum wage and overtime requirements of the Act even though his employer also operates one or more establishments which are not exempt. On the other hand, it may be stated as a general rule that if such an employer employs an employee in the work of both exempt and nonexempt establishments during the same workweek, the employee is not "employed by" an exempt establishment during such workweek. It is recognized, however, that employees performing an insignificant amount of such incidental work or performing work sporadically for the benefit of another establishment of their employer nevertheless, are "employed by" their employer's retail establishment. For example, there are situations where an employee of an employer, in order to discharge adequately the requirements of his job for the exempt establishment by which he is employed incidentally or sporadically may be called upon to perform some work for the benefit of another establishment. For example, an elevator operator employed by a retail store, in performance of his regular duties for the store incidentally may carry personnel who have a central office or warehouse function. Similarly, a maintenance man employed by such store incidentally may perform work which is for the benefit of the central office or warehouse activities. Also, a sales clerk employed in a retail store in one of its sales departments sporadically may be called upon to release some of the stock on hand in the department for the use of another store.

(b) The application of the principles discussed in § 779.310 and in paragraph (a) of this section would not preclude the applicability of the exemption to the employee whose duties require him to spend part of his week in one exempt retail establishment and the balance of the week in another of his employer's exempt retail establishments; provided that his work in each of the establishments will qualify him as "employed" by such a retail establishment at all times within the individual week. As an example, a shoe clerk may sell shoes for part of a week in one exempt retail establishment of his employer and in another of his employer's exempt retail establishments for the remainder of the workweek. In that entire workweek he would be considered to be employed by an exempt retail establishment. In such a situation there is no central office or warehouse concept, nor is the employee considered as performing services for the employer's business organization as a whole since there is no period during the week in which the employee is not "employed by" a single exempt retail establishment.

Statutory Meaning of Retail or Service Establishment

§ 779.312 "Retail or service establishment," defined in section 13(a)(2).

The 1949 amendments to the Act defined the term "retail or service establishment" in section 13(a)(2). That definition was retained in section 13(a)(2) as amended in 1961 and 1966 and is as follows:

> A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

It is clear from the legislative history of the 1961 amendments to the Act that no different meaning was intended by the term "retail or service establishment" from that already established by the Act's definition, wherever used in the new provisions, whether relating to coverage or to exemption. (See S. Rept. 145, 87th Cong., first session p. 27; H.R. 75, 87th Cong., first session p. 9.) The legislative history of the 1949 amendments and existing judicial pronouncements regarding section 13(a)(2) of the Act, therefore, will offer guidance to the application of this definition.

§ 779.313 Requirements summarized.

The statutory definition of the term "retail or service establishment" found in section 13(a)(2), clearly provides that an establishment to be a "retail or service establishment": (a) Must engage in the making of sales of goods or services; and (b) 75 percent of its sales of goods or services, or of both, must be recognized as retail in the particular industry; and (c) not over 25 percent of its sales of goods or services, or of both, may be sales for resale. These requirements are discussed below in §§ 779.314 through 779.341.

Making Sales of Goods and Services "Recognized as Retail"

§ 779.314 "Goods" and "services" defined.

The term "goods" is defined in section 3(i) of the Act and has been discussed above in § 779.14. The Act, however, does not define the term "services." The term "services," therefore, must be given a meaning consistent with its usage in ordinary speech, with the context in which it appears and with the legislative history of the exemption as it explains the scope, the purposes and the objectives of the exemption. Although in a very general sense every business might be said to perform a service it is clear from the context and the legislative history that all business establishments are not making sales of "services" of the type contemplated in the Act; that is, services rendered by establishments which are traditionally regarded as local retail service establishments such as the restaurants, hotels, barber shops, repair shops, etc. (See §§ 779.315 through 779.320.) It is to these latter services only that the term "service" refers.

§ 779.315 Traditional local retail or service establishments.

The term "retail" whether it refers to establishments or to the sale of goods or services is susceptible of various interpretations. When used in a specific law it can be defined properly only in terms of the purposes and objectives and scope of that law. In enacting the section 13(a)(2) exemption, Congress had before it the specific object of exempting from the minimum wage and overtime requirements of the Act employees employed by the traditional local retail or service establishment, subject to the conditions specified in the exemption. (See statements of Rep. Lucas, 95 Cong. Rec. pp. 11004 and 11116, and of Sen. Holland, 95 Cong. Rec. pp. 12502 and 12506.) Thus, the term "retail or service establishment" as used in the Act denotes the traditional local retail or service establishment whether pertaining to the coverage or exemption provisions.

§ 779.316 Establishments outside "retail concept" not within statutory definition; lack first requirement.

The term "retail" is alien to some businesses or operations. For example,

transactions of an insurance company are not ordinarily thought of as retail transactions. The same is true of an electric power company selling electrical energy to private consumers. As to establishments of such businesses, therefore, a concept of retail selling or servicing does not exist. That it was the intent of Congress to exclude such businesses from the term "retail or service establishment" is clearly demonstrated by the legislative history of the 1949 amendments and by the judicial construction given said term both before and after the 1949 amendments. It also should be noted from the judicial pronouncements that a "retail concept" cannot be artificially created in an industry in which there is no traditional concept of retail selling or servicing. (95 Cong. Rec. pp. 1115, 1116, 12502, 12506, 21510, 14877, and 14889; Mitchell v. Kentucky Finance Co., 359 U.S. 290; Phillips Co. v. Walling, 324 U.S. 490; Kirschbaum Co. v. Walling, 316 U.S. 517; Durkin v. Joyce Agency, Inc., 110 F. Supp. 918 (N.D. Ill.) affirmed sub nom Mitchell v. Joyce Agency, Inc., 348 U.S. 945; Goldberg v. Roberts 291 F. 2d 532 (CA–9); Wirtz v. Idaho Sheet Metal Works, 335 F. 2d 952 (CA–9), affirmed in 383 U.S. 190; Telephone Answering Service v. Goldberg, 290 F. 2d 529 (CA–1).) It is plain, therefore, that the term "retail or service establishment" as used in the Act does not encompass establishments in industries lacking a "retail concept". Such establishments not having been traditionally regarded as retail or service establishments cannot under any circumstances qualify as a "retail or service establishment" within the statutory definition of the Act, since they fail to meet the first requirement of the statutory definition. Industry usage of the term "retail" is not in itself controlling in determining when business transactions are retail sales under the Act. Judicial authority is quite clear that there are certain goods and services which can never be sold at retail. (Idaho Sheet Metal Works, Inc. v. Wirtz, 383 U.S. 190, 202, rehearing denied 383 U.S. 963; Wirtz v. Steepleton General Tire Company, Inc., 383 U.S. 190, 202, rehearing denied 383 U.S. 963.)

§ 779.317 Partial list of establishments lacking "retail concept."

There are types of establishments in industries where it is not readily apparent whether a retail concept exists and whether or not the exemption can apply. It, therefore, is not possible to give a complete list of the types of establishments that have no retail concept. It is possible, however, to give a partial list of establishments to which the retail concept does not apply. This list is as follows:

Accounting firms.
Adjustment and credit bureaus and collection agencies (Mitchell v. Rogers d.b.a. Commercial Credit Bureau, 138 F. Supp. 214 (D. Hawaii); Mill v. United States Credit Bureau, 1 WH Cases 878, 5 Labor Cases par. 60,992 (S.D. Calif.)).
Advertising agencies including billboard advertising.
Airconditioning and heating systems contractors.
Aircraft and aeronautical equipment; establishments engaged in the business of dealing in.
Airplane crop dusting, spraying and seeding firms.
Airports, airport servicing firms and fixed base operators.
Ambulance service companies.
Apartment houses.
Armored car companies.
Art; commercial art firms.
Auction houses (Fleming v. Kenton Whse., 41 F. Supp. 255).
Auto-wreckers' and junk dealers' establishments (Bracy v. Luray, 138 F. 2d 8 (CA–4); Edwards v. South Side Auto Parts (Mo. App.) 180 SW 2d 1015). (These typically sell for resale.)
Automatic vending machinery; establishments engaged in the business of dealing in.
Banks (both commercial and savings).
Barber and beauty parlor equipment; establishments engaged in the business of dealing in.
Blacksmiths; industrial.
Blue printing and photostating establishments.
Booking agencies for actors and concert artists.
Bottling and bottling equipment and canning machinery; establishments engaged in the business of dealing in.
Broadcasting companies.
Brokers, custom house; freight brokers; insurance brokers, stock or commodity brokers.
Building and loan associations.
Building contractors.
Burglar alarms; establishments engaged in furnishing, installing and repairing for commercial establishments (Walling v. Thompson, 65 F. Supp. 686 (S.D. Calif.)).
Burial associations (Gilreath v. Daniel (C.A. 8), 19 WH Cases 370).
Butchers' equipment; establishments engaged in the business of dealing in.
Chambers of Commerce.
Chemical equipment; establishments engaged in the business of dealing in.
Clubs and fraternal organizations with a select or restricted membership.
Common and contract carriers; establishments engaged in providing services, fuel, equipment, or other goods or facilities for the operation of such carriers (Idaho Sheet Metal Works v. Wirtz, 383 U.S. 190, rehearing denied 383 U.S. 963; Wirtz v. Steepleton General Tire Co., Inc., 383 U.S. 190, rehearing denied 383 U.S. 963; Boutell v. Walling, 327 U.S. 463).
Common carrier stations and terminals.
Construction contractors.
Contract Post Offices.
Credit companies, including small loan and personal loan companies (Mitchell v. Kentucky Finance Co., 359 U.S. 290).
Credit rating agencies.
Dentists' offices.
Dentists supply and equipment establishments.
Detective agencies.
Doctors' offices.
Dry cleaners (see 95 Cong. Rec., p. 12503 and § 779.337(b) of this part).
Drydock companies.
Dye houses, commercial (Walling v. Kerr, 47 F. Supp. 852 (E.D. Pa.)).
Duplicating, addressing, mailing, mail listings, and letter stuffing establishments (Goldberg v. Roberts d.b.a. Typing and Mailing Unlimited, 15 WH Cases 100, 42 L.C. par. 31,126 (CA–9); Durkin v. Shone, 112 F. Supp. 375 (E.D. Tenn.); Hanzley v. Hooven Letters, 44 N.Y.S. 2d 398 (City Ct. N.Y. 1943)).
Educational institutions (for express exclusion see § 779.337(b)).
Electric and gas utilities (Meeker Cooperative Light & Power Assn. v. Phillips, 158 F. 2d 698 (CA–8); New Mexico Public Service Co. v. Engel, 145 F. 2d 636 (CA–10); Brown v. Minngas Co., 51 F. Supp. 363 (D. Minn.)).
Electric signs; establishments engaged in making, installing and servicing.
Elevators; establishments engaged in repairing (Cf. Muldowney v. Seaberg Elevator Co., 39 F. Supp. 275 (E.D.N.Y.)).
Employment Agencies (Yunker v. Abbye Employment Agency, Inc., 32 N.Y.S. 2d 715 (N.Y.C. Munic. Ct. 1942)).
Engineering firms.
Factors.
Filling station equipment; establishments engaged in the business of dealing in.
Finance companies (Mitchell v. Kentucky Finance Co., 359 U.S. 290).
Flying schools.
Gambling establishments.
Geological surveys; firms engaged in making.
Heating and air conditioning systems contractors.
Hospital equipment (such as operating instruments, X-ray machines, operating tables, etc.); establishments engaged in the business of dealing in.
Insurance; mutual, stock and fraternal benefit, including insurance brokers, agents, and claims adjustment offices.
Income tax return preparers.
Investment counseling firms.
Jewelers' equipment; establishments engaged in the business of dealing in.
Job efficiency checking and rating; establishments engaged in the business of supplying.
Labor unions.
Laboratory equipment; establishments engaged in the business of dealing in.
Landscaping contractors.
Laundries (see 95 Cong. Rec., p. 12503 and § 779.337(b) of this part).
Laundry; establishments engaged in the business of dealing in commercial laundry equipment.
Lawyers' offices.
Legal concerns engaged in compiling and distributing information regarding legal developments.
License and legal document service firms.
Loan offices (see credit companies).
Loft buildings or office buildings; concerns engaged in renting and maintenance of (Kirschbaum v. Walling, 316 U.S. 517; Statement of Senator Holland, 95 Cong. Rec., p. 12505).
Machinery and equipment, including tools—establishments engaged in selling or servicing of construction, mining, manufacturing and industrial machinery, equipment and tools (Roland Electric Co. v. Walling, 326 U.S. 657; Guess v. Montaque, 140 F. 2d 500 (CA–4); cf. Walling v. Thompson, 65 F. Supp. 686 (S.D. Calif.)).
Magazine subscription agencies (Wirtz v. Keystone Serv. (C.A. 5), 418 F. 2d 249)
Medical and dental clinics.
Medical and dental laboratories.
Medical and dental laboratory supplies; establishments engaged in the business of dealing in.
Messenger; firms engaged in furnishing commercial messenger service (Walling v. Allied Messenger Service, 47 F. Supp. 773 (S.D.N.Y.)).
Newspaper and magazine publishers.
Oil-well drilling; companies engaged in contract oil-well drilling.
Oil-well surveying firms (Straughn v. Schlumberger Well Surveying Corp., 72 F. Supp. 511 (S.D. Tex.)).
Packing companies engaged in slaughtering livestock (Walling v. Peoples Packing Co., 132 F. 2d 236 (CA–10)).
Painting contractors.

Pharmacists' supplies; establishments engaged in the business of dealing in.
Photography, commercial, establishments engaged in.
Plumbers' equipment; establishments engaged in the business of dealing in.
Plumbing contractors.
Press clipping bureaus.
Printers' and lithographers' supplies; establishments engaged in the business of dealing in.
Printing and binding establishments (Casa Baldrich, Inc. v. Mitchell, 214 F. 2d 703 (CA-1)).
Protection and Shopping services for industry; establishments engaged in supplying (Durkin v. Joyce Agency, Inc., 110 F. Supp. 918 (N.D. Ill.) affirmed sub nom. Mitchell v. Joyce Agency, Inc., 348 U.S. 945).
Quarries (Walling v. Partee, 3 WH Cases 543, 7 Labor Cases, par. 61, 721 (M.D. Tenn.)).
Radio and television broadcasting stations and studios.
Ready-mix concrete suppliers.
Real estate companies.
Roofing contractors.
Schools (except schools for mentally or physically handicapped or gifted children): (All now excluded, see § 779.337(b)).
School supply distributors.
Security dealers.
Sheet metal contractors.
Ship equipment, commercial; establishments engaged in the business of dealing in.
Shopping analysts services.
Siding and insulation contractors.
Sign-painting shops.
Special trade contractors (construction industry).
Stamp and coupon redemption stores.
Statistical reporting, business and financial data; establishments engaged in furnishing.
Store equipment; establishments engaged in the business of dealing in.
Tax services.
Telegraph and cable companies.
Telephone companies; (Schmidt v. Peoples Telephone Union of Maryville, Mo., 138 F. 2d 13 (CA-8)).
Telephone answer service; establishments engaged in furnishing. (Telephone Answering Service v. Goldberg, 15 WH Cases 67, 4 L.C. Par. 31,104 (CA-1)).
Title and abstract companies.
Tobacco auction warehouses (Fleming v. Kenton Loose Leaf Tobacco Warehouse Co., 41 F. Supp. 255 (E.D. Ky.); Walling v. Lincoln Loose Leaf Warehouse Co., 59 F. Supp. 601 (E.D. Tenn.)).
Toll bridge companies.
Trade associations.
Transportation equipment, commercial; establishments engaged in the business of dealing in.
Transportation companies.
Travel agencies.
Tree removal firms.
Truck stop establishments (Idaho Sheet Metal Works, Inc., v. Wirtz, 383 U.S. 190, rehearing denied 383 U.S. 963; Wirtz v. Steepleton General Tire Co., Inc., 383 U.S. 190, rehearing denied 383 U.S. 963).
Trust companies.
Undertakers' supplies; establishments engaged in the business of dealing in.
Wagers, establishments accepting, as business in which they are engaged.
Warehouse companies; commercial or industrial (Walling v. Public Quick Freezing and Cold Storage Co., 62 F. Supp. 924 (S.D. Fla.)).
Warehouse equipment and supplies; establishments engaged in the business of dealing in.
Waste removal contractors.
Watchmen, guards and detectives for industries; establishments engaged in supplying (Walling v. Sondock, 132 F. 2d 77 (CA-5); Walling v. Wattam, 3 WH Cases 726, 8 Labor Cases, par. 62,023 (W.D. Tenn. 1943); Walling v. Lum, 4 WH Cases 465, 8 Labor Cases, par. 62,185 (S.D. Miss., 1944); Walling v. New Orleans Private Patrol Service, 57 F. Supp. 143 (E.D. La., 1944); Haley v. Central Watch Service, 4 WH Cases 158, 8 Labor Cases, par. 62,002 (N.D. Ill., 1944)).
Water supply companies (Reynolds v. Salt River Valley Water Users Assn., 143 F. 2d (863 (CA-9))).
Water well drilling contractors.
Window displays; establishments engaged in the business of dealing in.
Wrecking contractors.

§ 779.318 Characteristics and examples of retail or service establishments.

(a) Typically a retail or service establishment is one which sells goods or services to the general public. It serves the everyday needs of the community in which it is located. The retail or service establishment performs a function in the business organization of the Nation which is at the very end of the stream of distribution, disposing in small quantities of the products and skills of such organization and does not take part in the manufacturing process. (See, however, the discussion of section 13(a)(4) in §§ 779.346 to 779.350.) Such an establishment sells to the general public its food and drink. It sells to such public its clothing and its furniture, its automobiles, its radios and refrigerators, its coal and its lumber, and other goods, and performs incidental services on such goods when necessary. It provides the general public its repair services and other services for the comfort and convenience of such public in the course of its daily living. Illustrative of such establishments are: Grocery stores, hardware stores, clothing stores, coal dealers, furniture stores, restaurants, hotels, watch repair establishments, barber shops, valet shops, and other such local establishments.

(b) The legislative history of the section 13(a)(2) exemption for certain retail or service establishments shows that Congress also intended that the retail exemption extend in some measure beyond consumer goods and services to embrace certain products almost never purchased for family or noncommercial use. A precise line between such articles and those which can never be sold at retail cannot be drawn. But a few characteristics of items like small trucks and farm implements may offer some guidance; their use is very widespread as is that of consumer goods; they are often distributed in stores or showrooms by means not dissimilar to those used for consumer goods; and they are frequently used in commercial activities of limited scope. The list of strictly commercial items whose sale can be deemed retail is very small and a determination as to the application of the retail exemption in specific cases would depend upon the consideration of all the circumstances relevant to the situation. (Idaho Sheet Metal Works, Inc. v. Wirtz and Wirtz v. Steepleton General Tire Company, Inc., 383 U.S. 190, 202, rehearing denied 383 U.S. 963.)

§ 779.319 A retail or service establishment must be open to general public.

The location of the retail or service establishment, whether in an industrial plant, an office building, a railroad depot, or a government park, etc., will make no difference in the application of the exemption and such an establishment will be exempt if it meets the tests of the exemption. Generally, however, an establishment, wherever located, will not be considered a retail or service establishment within the meaning of the Act, if it is not ordinarily available to the general consuming public. An establishment, however, does not have to be actually frequented by the general public in the sense that the public must actually visit it and make purchases of goods or services on the premises in order to be considered as available and open to the general public. A refrigerator repair service shop, for example, is available and open to the general public even if it receives all its orders on the telephone and performs all of its repair services on the premises of its customers.

§ 779.320 Partial list of establishments whose sales or services may be recognized as retail.

Antique shops.
Auto courts.
Automobile dealers' establishments.
Automobile laundries.
Automobile repair shops.
Barber shops.
Beauty shops.
Bicycle shops.
Billiard parlors.
Book stores.
Bowling alleys.
Butcher shops.
Cafeterias.
Cemeteries.
China, glassware stores.
Cigar stores.
Clothing stores.
Coal yards.
Confectionery stores.
Crematories.
Dance halls.
Delicatessen stores.
Department stores.
Drapery stores.
Dress-suit rental establishments.
Drug stores.
Dry goods stores.
Embalming establishments.
Farm implement dealers.
Filling stations.
Floor covering stores.
Florists.
Funeral homes.
Fur repair and storage shops.
Fur shops.
Furniture stores.
Gift, novelty and souvenir shops.
Grocery stores.
Hardware stores.
Hosiery shops.
Hotels.
Household appliance stores.
Household furniture storage and moving establishments.
Household refrigerator service and repair shops.
Infants' wear shops.
Jewelry stores.
Liquor stores.
Luggage stores.
Lumber yards.
Masseur establishments.
Millinery shops.
Musical instrument stores and repair shops.

Newsstands.
Paint stores.
Public parking lots.
Photographic supply and camera shops.
Piano tuning establishments.
Public baths.
Public garages.
Radio and television stores and repair shops.
Recreational camps.
Reducing establishments.
Restaurants.
Roadside diners.
Scalp-treatment establishments.
Shoe repair shops.
Shoeshine parlors.
Sporting goods stores.
Stationery stores.
Taxidermists.
Theaters.
Tourist houses.
Trailer camps.
Undertakers.
Valet shops.
Variety shops.
Watch, clock and jewelry repair establishments.

§ 779.321 **Inapplicability of "retail concept" to some types of sales or services of an eligible establishment.**

(a) Only those sales or services to which the retail concept applies may be recognized as retail sales of goods or services for purposes of the exemption. The fact that the particular establishment may have a concept of retailability, in that it makes sales of types which may be recognized as retail, is not determinative unless the requisite portion of its annual dollar volume is derived from particular sales of its goods and services which have a concept of retailability. Thus, the mere fact that an establishment is of a type noted in § 779.320 does not mean that any particular sales of such establishment are within the retail concept. As to each particular sale of goods or services, an initial question that must be answered is whether the sales of goods or services of the particular type involved can ever be recognized as retail. The Supreme Court in Wirtz v. Steepleton General Tire Co., 383 U.S. 190, confirmed the Department's position that (1) the concept of "retailability" must apply to particular sales of the establishment, as well as the establishment or business as a whole, and (2) even as to the establishment whose sales are "variegated" and include retail sales, that nonetheless classification of particular sales of goods or services as ever coming within the concept of retailability must be made. Sales of some particular types of goods or services may be decisively classified as nonretail on the ground that such particular types of goods or services cannot ever qualify as retail whatever the terms of sale, regardless of the industry usage or classification.

(b) An establishment is, therefore, not automatically exempt upon a finding that it is of the type to which the retail concept of selling or servicing is applicable; it must meet all the tests specified in the Act in order to qualify for exemption. Thus, for example, an establishment may be engaged in repairing household refrigerators, and in addition it may be selling and repairing manufacturing machinery for manufacturing establishments. The retail concept does not apply to the latter activities. In such case, the exemption will not apply if the annual dollar volume derived from the selling and servicing of such machinery, and from any other sales and services which are not recognized as retail sales or services, and from sales of goods or services for resale exceeds 25 percent of the establishment's total annual dollar volume of sales of goods or services.

(c) Since there is no retail concept in the construction industry, gross receipts from construction activities of any establishment also engaged in retail selling must be counted as dollar volume from sales not recognized as retail in applying the percentage tests of section 13(a)(2). Also, since construction and the distribution of goods are entirely dissimilar activities performed in industries traditionally recognized as wholly separate and distinct from each other, an employee engaged in construction activities is not employed within the scope of his employer's otherwise exempt retail business in any week in which the employee engages in such construction work, and is therefore (see § 779.308) not employed "by" a retail or service establishment within the meaning of the Act in such workweek.

(d) Certain business establishments engage in the retail sale to the general public, as goods delivered to purchasers at a stipulated price, of items such as certain plumbing and heating equipment, electrical fixtures and supplies, and fencing and siding for residential installation. In addition to selling the goods they may also install, at an additional charge, the goods which are sold. Installation which is incidental to a retail sale (as distinguished from a construction or reconstruction contract to do a building, alteration, or repair job at a contract price for materials and labor required, see § 779.355(a)(1)) is considered an exempt activity. By way of example, if the installation for the customer of such goods sold to him at retail requires only minor carpentry, plumbing or electrical work (as may be the case where ordinary plumbing fixtures, or household items such as stoves, garbage disposals, attic fans, or window air conditioners are being installed or replaced), or where only labor of the type required for the usual installation of chain link fences around a home or small business establishment is involved, will normally be considered as incidental to the retail sale of the goods involved (unless, of course, the transaction between the parties is for a construction job at an overall price for the job, involving no retail sale of goods as such). In determining whether such an installation is incidental to a retail sale or constitutes a nonretail construction activity, it is necessary to consider the general characteristics of the entire transaction. Where one or more of the following conditions are present, the installation will normally be considered a construction activity rather than incidental to a retail sale:

(1) The cost to the purchaser of the installation in relation to the sale price of the goods is substantial;

(2) The installation involves substantial structural changes, extensive labor, planning, or the use of specialized equipment;

(3) The goods are being installed in conjunction with the construction of a new home or other structure; or

(4) The goods installed are of a specialized type which the general consuming public does not ordinarily have occasion to use.

(e) An auxiliary employee of an exempt retail or service establishment performing clerical, maintenance, or custodial work in the exempt establishment which is related to the establishment's construction activities will, for enforcement purposes, be considered exempt in any workweek if no more than 20 percent of his time is spent in such work.

"RECOGNIZED" AS RETAIL "IN THE PARTICULAR INDUSTRY"

§ 779.322 **Second requirement for qualifying as a "retail or service establishment".**

If the business is one to which the retail concept is applicable then the second requirement for qualifying as a "retail or service establishment" within that term's statutory definition is that 75 percent of the establishment's annual dollar volume must be derived from sales of goods or services (or of both) which are recognized as retail sales or services in the particular industry. Under the Act, this requirement is distinct from the requirement that 75 percent of annual dollar volume be from sales of goods or services "not for resale" (§ 779.329); many sales which are not for resale lack a retail concept and the fact that a sale is not for resale cannot establish that it is recognized as retail in a particular industry. (See Wirtz v. Steepleton General Tire Co., 383 U.S. 190.) To determine whether the sales or services of an establishment are recognized as retail sales or services in the particular industry, we must inquire into what is meant by the terms "recognized" and "in the particular industry," and into the functions of the Secretary and the courts in determining whether the sales are recognized as retail in the industry.

§ 779.323 **Particular industry.**

In order to determine whether a sale or service is recognized as a retail sale or service in the "particular industry" it is necessary to identify the "particular" industry to which the sale or service belongs. Some situations are clear and present no difficulty. The sale of clothes, for example, belongs to the clothing industry and the sale of ice belongs to the ice industry. In other situations, a sale or service is not so easily earmarked and a wide area of overlapping exists. Household appliances are sold by public utilities as well as by department stores and by stores specializing in the sale of such goods; and tires are sold by manufacturers' outlets, by independent tire dealers and by other types of outlets. In

these cases, a fair determination as to whether a sale or service is recognized as retail in the "particular" industry may be made by giving to the term "industry" its broad statutory definition as a "group of industries" and thus including all industries wherein a significant quantity of the particular product or service is sold. For example, in determining whether a sale of lumber is a retail sale, it is the recognition the sale of lumber occupies in the lumber industry generally which decides its character rather than the recognition such sales occupies in any branch of that industry.

§ 779.324 Recognition "in."

The express terms of the statutory provision requires the "recognition" to be "in" the industry and not "by" the industry. Thus, the basis for the determination as to what is recognized as retail "in the particular industry" is wider and greater than the views of an employer in a trade or business, or an association of such employers. It is clear from the legislative history and judicial pronouncements that it was not the intent of this provision to delegate to employers in any particular industry the power to exempt themselves from the requirements of the Act. It was emphasized in the debates in Congress that while the views of an industry are significant and material in determining what is recognized as a retail sale in a particular industry, the determination is not dependent on those views alone. (See 95 Cong. Rec. pp. 12501, 12502, and 12510; Wirtz v. Steepleton General Tire Co., 383 U.S. 190; Mitchell v. City Ice Co., 273 F. 2d 560 (CA–5); Durkin v. Casa Baldrich, Inc., 111 F. Supp. 71 (DCPR) affirmed 214 F. 2d 703 (CA–1); see also Aetna Finance Co. v. Mitchell, 247 F. 2d 190 (CA–1).) Such a determination must take into consideration the well-settled habits of business, traditional understanding and common knowledge. These involve the understanding and knowledge of the purchaser as well as the seller, the wholesaler as well as the retailer, the employee as well as the employer, and private and governmental research and statistical organizations. The understanding of all these and others who have knowledge of recognized classifications in an industry, would all be relevant in the determination of the question.

§ 779.325 Functions of the Secretary and the courts.

It may be necessary for the Secretary in the performance of his duties under the Act, to determine in some instances whether a sale or service is recognized as a retail sale or particular industry. In the exceptional case where the determination cannot be made on the basis of common knowledge or readily accessible information, the Secretary may gather the information needed for the purpose of making such determinations. Available information on usage and practice in the industry is carefully considered in making such determinations, but the "word-usage of the industry" does not have controlling force; the Secretary "cannot be hamstrung by the terminology of a particular trade" and possesses considerable discretion as the one responsible for the actual administration of the Act. (Wirtz v. Steepleton General Tire Co., 383 U.S. 190; and see 95 Cong. Rec. 12501–12502, 12510.) The responsibility for making final decisions, of course, rests with the courts. An employer disagreeing with the determinations of the Secretary and claiming exemption has the burden of proving in a court proceeding that the prescribed percentage of the establishment's sales or services are recognized as retail in the industry and that his establishment qualifies for the exemption claimed by him. (See Wirtz v. Steepleton, cited above, and 95 Cong. Rec. 12510.)

§ 779.326 Sources of information.

In determining whether a sale or service is recognized as a retail sale or service in a particular industry, there are available to the Secretary a number of sources of information to aid him in arriving at a conclusion. These sources include: (a) The legislative history of the Act as originally enacted in 1938 and the legislative history of the 1949, 1961, and 1966 amendments to the Act pertaining to those sections in which the term "retail or service establishment" is found, particularly in the section 13(a)(2) exemption; (b) the decisions of the courts during the intervening years; and (c) the Secretary's experience in the intervening years in interpreting and administering the Act. These sources of information enable the Secretary to lay down certain standards and criteria, as discussed in this subpart, for determining generally and in some cases specifically what sales or services are recognized as retail sales or services in particular industries.

§ 779.327 Wholesale sales.

A wholesale sale, of course, is not recognized as a retail sale. If an establishment derives more than 25 percent of its annual dollar volume from sales made at wholesale, it clearly cannot qualify as a retail and service establishment. It must be remembered, however, that what is a retail sale for purposes of a sales tax law is not necessarily a retail sale for purposes of the statutory definition of the term "retail or service establishment". Similarly, a showing that sales of goods or services are not wholesale or are made to the ultimate consumer and are not for resale does not necessarily prove that such sales or services are recognized in the particular industry as retail. (Wirtz v. Steepleton General Tire Co., 383 U.S. 190.)

§ 779.328 Retail and wholesale distinguished.

(a) The distinction between a retail sale and a wholesale sale is one of fact. Typically, retail sales are made to the general consuming public. The sales are numerous and involve small quantities of goods or services. Wholesale establishments usually exclude the general consuming public as a matter of established business policy and confine their sales to other wholesalers, retailers, and industrial or business purchasers in quantities greater than are normally sold to the general consuming public at retail. What constitutes a small quantity of goods depends, of course, upon the facts in the particular case and the quantity will vary with different commodities and in different trades and industries. Thus, a different quantity would be characteristic of retail sales of canned tomato juice, bed sheets, furniture, coal, etc. The quantity test is a well-recognized business concept. There are reasonably definite limits as to the quantity of a particular commodity which the general consuming public regularly purchases at any given time at retail and businessmen are aware of these buying habits. These buying habits set the standard for the quantity of goods which is recognized in an industry as the subject of a retail sale. Quantities which are materially in excess of such a standard are generally regarded as wholesale and not retail quantities.

(b) The sale of goods or services in a quantity approximating the quantity involved in a normal wholesale transaction and as to which a special discount from the normal retail price is given is generally regarded as a wholesale sale in most industries. Whether the sale of such a quantity must always involve a discount in order to be considered a wholesale sale depends upon industry practice. If the practice in a particular industry is such that a discount from the normal retail price is not regarded in the industry as significant in determining whether the sale of a certain quantity is a wholesale sale, then the question of whether the sale of such a quantity will be considered a wholesale sale would be determined without reference to the price. In some industries, the sale of a small quantity at a discount may also be regarded as a wholesale sale, in which case it will be so treated for purposes of the exemption. Generally, as the Supreme Court has recognized (Wirtz v. Steepleton General Tire Co., 383 U.S. 190), both the legislative history and common parlance suggest that "the term retail becomes less apt as the quantity and the price discount increases in a particular transaction."

(c) In some cases, a purchaser contracts for the purchase of a large quantity of goods or services to be delivered or performed in smaller quantities or jobs from time to time as the occasion requires. In other cases, the purchaser instead of entering into a single contract for the entire amount of goods, or services, receives a series of regular deliveries or performances pursuant to a quotation, bid, estimate, or general business arrangement or understanding. In these situations, if the total quantity of goods or services which is sold is materially in excess of the total quantity of goods or services which might reasonably be purchased by a member of the general consuming public during the same period, it will be treated as a wholesale quantity for purposes of the statutory definition of the term "retail or service establishment", in the absence of clear evidence

that under such circumstances such a quantity is recognized as a retail quantity in the particular industry. For example, if a food service firm contracts with a college to provide meals for the latter's boarding students for a term, in consideration of payment by the college of a stipulated sum based on the number of students registered or provided with meals, the services are being sold in a wholesale, rather than a retail quantity. If such a contract is entered into as a result of formal bids, as noted in paragraph (d) of this section, this would be an additional reason for nonrecognition of the transaction as a retail sale of such services.

(d) Sales made pursuant to formal bid procedures, such as those utilized by the agencies of Federal, State, and local governments and oftentimes by commercial and industrial concerns involving the issuance by the buyer of a formal invitation to bid on certain merchandise or services for delivery in accordance with prescribed terms and specifications, are not recognized as retail sales.

§ 779.329 Effect of type of customer and type of goods or services.

In some industries the type of goods or services sold or the type of purchaser of goods or services are determining factors in whether a sale or service is recognized as retail in the particular industry. In other industries a sale or service may be recognized as retail regardless of the type of goods or services sold or the type of customer. Where a sale is recognized as retail regardless of the type of customer, its character as such will not be affected by the character of the customer, with reference to whether he is a private individual or a business concern, or by the use the purchaser makes of the purchased commodity. For example, if the sale of a single automobile to anyone for any purpose is recognized as a retail sale in the industry, it will be considered as a retail sale for purposes of the exemption whether the customer be a private individual or an industrial concern or whether the automobile is used by the purchaser for pleasure purposes or for business purposes. If a sale of a particular quantity of coal is recognized in the industry as a retail sale, its character as such will not be affected by the fact that it is sold for the purpose of heating an office building as distinguished from a private dwelling. If the repair of a wash basin is recognized in the industry as a retail service, its character as such will not be affected by the fact that it is a wash basin in a factory building as distinguished from a wash basin in a private dwelling house. It must be remembered that these principles apply only to those sales of goods or services which have a retail concept, that is, where the subject matter is "retailable." See § 779.321. The "industry-recognition" question as to whether such sales are recognized as retail in the industry has no relevancy if in fact the goods and services sold are not of a "retailable" character, as previously explained. If the subject of the sale does not come within the concept of retailable items contemplated by the statute, there can be no recognition in any industry of the sale of the goods or services as retail, for purposes of the Act, even though the nomenclature used by the industry members may put a retail label on the transaction. (See Wirtz v. Steepleton General Tire Co., 383 U.S. 190; Mitchell v. Kentucky Finance Co., 359 U.S. 290.)

Sales Not Made for Resale

§ 779.330 Third requirement for qualifying as a "retail or service establishment."

The third requirement for qualifying as a "retail or service establishment" within that term's statutory definition is that 75 percent of the retail or service establishment's annual dollar volume must be from sales of goods or of services (or of both) which are not made for resale. At least three-fourths of the total sales of goods or services (or of both) (measured by annual dollar volume) must not be made for resale. Except under the special provision in section 3(n) of the Act, discussed in § 779.335, the requirement that 75 percent of the establishment's dollar volume be from sales of goods or services "not for resale" is a separate test and a sale which is "for resale" cannot be counted toward the required 75 percent even if it is recognized as retail in the particular industry. The prescribed 75 percent must be from sales which are both not for resale and recognized as retail.

§ 779.331 Meaning of sales "for resale."

Except with respect to a specific situation regarding certain building materials, the word "resale" is not defined in the Act. The common meaning of "resale" is the act of "selling again." A sale is made for resale where the seller knows or has reasonable cause to believe that the goods or services will be resold, whether in their original form, or in an altered form, or as a part, component or ingredient of another article. Where the goods or services are sold for resale, it does not matter what ultimately happens to such goods or services. Thus, the fact that the goods are consumed by fire or no market is found for them, and are, therefore, never resold does not alter the character of the sale which is made for resale. Similarly, if at the time the sale is made, the seller has no knowledge or reasonable cause to believe that the goods are purchased for the purpose of resale, the fact that the goods later are actually resold is not controlling. In considering whether there is a sale of goods or services and whether such goods or services are sold for resale in any specific situation, the term "sale" includes, as defined in section 3(k) of the Act, "any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition." Thus, under the definition sales by an establishment to a competitor are regarded as sales for resale even though made without profit. (Northwestern-Hanna Fuel Co. v. McComb, 166 F. 2d 932 (CA-8).) Similarly, sales for distribution by the purchaser for business purposes are sales for resale under the "other disposition" language of the definition of "sale" even though distributed at no cost to the ultimate recipient. (See Mitchell v. Duplicate Photo Service, 13 WH Cases 71, 31 L.C. Par. 70,287 (S.D. Cal. 1956) accord, Mitchell v. Sherry Corine Corporation, 264 F. 2d 831 (CA-4) (sale of meals to airlines for distribution to their passengers).) It should be noted, however, that occasional transfers of goods from the stock of one retail or service establishment to relieve a shortage in another such establishment under the same ownership will not be considered as sales for resale.

§ 779.332 Resale of goods in an altered form or as parts or ingredients of other goods or services.

Sale for resale includes the sale of goods which will be resold in their original form, in an altered form, or as a part or ingredient of another article. A sale of goods which the seller knows, or has reasonable cause to believe, will be resold after processing or manufacture is a sale for resale. Thus, sales of parts with the expectation that they will be incorporated in aircraft and that the aircraft will be sold clearly are sales for resale. (Arnold v. Ben Kanowsky, Inc., 361 U.S. 388.) Similarly, the sale of lumber to furniture or box factories, or the sale of textiles to clothing manufacturers, is a sale for resale even though the goods are resold in the form of furniture or clothing. The principle is also illustrated in cases where the article sold becomes a part or an ingredient of another, such as scrap metal in steel, dyes in fabrics, flour in bread and pastries, and salt in food or ice in beverages. (Mitchell v. Douglas Auto Parts Co., 11 WH Cases 807, 25 L.C. Par. 68,119 (N.D. Ill., 1954).) The fact that goods sold will be resold as a part of a service in which they are used or as a part of a building into which they are incorporated does not negate the character of the sale as one "for resale." (Mitchell v. Furman Beauty Supply, 300 F. 2d 16 (CA-3); Mayol v. Mitchell, 280 F. 2d 477 (CA-1), cert. denied 364 U.S. 902; Goldberg v. Kleban Eng. Corp., 303 F. 2d 855 (CA-5).)

§ 779.333 Goods sold for use as raw materials in other products.

Goods are sold for resale where they are sold for use as a raw material in the production of a specific product to be sold, such as sales of coal for the production of coke, coal gas, or electricity, or sales of liquefied-petroleum-gas for the production of chemicals or synthetic rubber. However, the goods are not considered sold for resale if sold for general industrial or commercial uses, such as coal for use in laundries, bakeries, nurseries, canneries, or for space heating, or ice for use by grocery stores or meat markets in cooling and preserving groceries and meat to be sold. Similarly, ice used for cooling soft drinks while in storage will not be considered sold for resale. On

the other hand, ice or ice cubes sold for serving in soft drinks or other beverages will be considered as sales for resale.

§ 779.334 Sales of services for resale.

The same principles apply in the case of sales of services for resale. A sale of services where the seller knows or has reasonable cause to believe will be resold is a sale for resale. Where, for example, an establishment reconditions and repairs watches for retail jewelers who resell the services to their own customers, the services constitute a sale for resale. Where a garage repairs automobiles for a secondhand automobile dealer with the knowledge or reasonable cause to believe that the automobile on which the work is performed will be sold, the service performed by the garage is a sale for resale. The services performed by a dental laboratory in the making of artificial teeth for the dentist for the use of his patients is a sale of services (as well as of goods) for resale. The services of a fur repair and storage establishment performed for other establishments who sell these services to their own customers, constitute sales for resale. As in the case of the sale of goods, in certain circumstances, sales of services to a business for a specific use in performing a different service which such business renders to its own customers are in economic effect sales for resale as a part of the service that the purchaser in turn sells to his customers, even though such services are consumed in the process of performance of the latter service. For example, if a storage establishment uses mothproofing services in order to render satisfactory storage services for its customers, the sale of such mothproofing services to that storage establishment will be considered a sale for resale.

§ 779.335 Sales of building materials for residential or farm building construction.

Section 3(n) of the Act, as amended, excludes from the category of sales for resale "the sale of goods to be used in residential or farm building construction, repair or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry." Under this section a sale of building materials to a building contractor or a builder for use in residential or farm building, repair or maintenance is not a sale for resale, provided, the sale is otherwise recognized as a bona fide retail sale in the industry. If the sale is not so recognized it will be considered a sale for resale. Thus, only bona fide retail sales of building materials to a building contractor or a builder for the uses described would be taken out of the category of sales for resale. (Sucrs. De A. Mayol & Co. v. Mitchell, 280 F. 2d 477 (CA–1); Elder v. Phillips & Buttroff Mfg. Co., 23 L.C. Par. 67,524 (Tenn., 1958).) The legislative history of the amendment indicates that it is not the intent of its sponsors to remove from the category of sales for resale such sales, for example, as sales of lumber to a contractor to build a whole residential subdivision. (See 95 Cong. Rec. 12533–12535; Sen. St., ibid; 14877.)

§ 779.336 Sales of building materials for commercial property construction.

Sales of building materials to a contractor or speculative builder for the construction, maintenance or repair of commercial property or any other property not excepted in section 3(n) of the Act, as explained above, will be considered as sales for resale. (See § 779.332, § 779.335.) Some employers who are dealers in building materials are also engaged in the business of building contractors or speculative builders. Building materials for the carrying on of the employer's contracting or speculative building business often are supplied by the employer himself from or through his building materials establishment. In the analysis of the sales of the building materials establishment for the purpose of determining the qualification of such establishment as a "retail or service establishment" all transfers of stock made by the employer from or through his building materials establishment to his building business for the construction, maintenance or repair of commercial property or any other property not excepted in section 3(n) of the Act will be considered as sales made by such establishment for resale.

General Tests of Exemption Under Section 13(a)(2)

§ 779.337 Requirements of exemption summarized.

(a) An establishment which is a "retail or service establishment" within the Act's statutory definition of that term (See discussion in §§ 779.312 to 779.336) must, to qualify as an exempt retail or service establishment under section 13(a)(2) of the Act (See § 779.301), meet both of the following tests:

(1) More than 50 percent of the retail or service establishment's total annual dollar volume of sales must be derived from sales of goods or services (or both) which are made within the State in which the establishment is located; and

(2) Either:

(i) The retail or service establishment must not be in an enterprise of the type described in section 3(s), or

(ii) If the retail or service establishment is in an enterprise of the type described in 3(s), it has an annual volume of sales (exclusive of excise taxes at the retail level which are separately stated) of less than $250,000.

(b) The language of the statute in section 13(a)(2) expressly excludes from the exemption an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4) of the Act. No exemption for these is provided under this section even if the establishment meets the tests set forth in paragraph (a) of this section. (See § 779.338(b).) With respect to laundering and dry-cleaning establishments, which Congress found to lack a retail concept (See § 779.317) and had provided with a separate exemption in former section 13(a)(3) of the Act, repealed by the 1966 amendments, this exclusion simply clarifies the congressional intent to cover employees in such work under section 3(s)(2) of the present Act and to make sure that no exemption under 13(a)(2) will be construed so as to defeat the purpose of repealing the prior special exemption.

§ 779.338 Effect of 1961 and 1966 amendments.

(a) The 1961 amendments to the Fair Labor Standards Act narrowed the exemption for retail or service establishments by permitting section 13(a)(2) to be applied only to an establishment which was not in a covered enterprise, or (if it was in such an enterprise) which had an annual gross volume of sales of less than $250,000 (exclusive of specified taxes). There were certain exceptions to this general principle. These exceptions were set out in section 13(a)(2) (ii) and (iii). The establishments enumerated therein were exempt whether or not they were in a covered enterprise and regardless of the annual dollar volume of sales. They were: Hotels, motels, restaurants, motion picture theaters, seasonally operated amusement or recreational establishments, hospitals, institutions primarily engaged in the care of the sick, the aged, the mentally ill or defective residing on the premises of the institution, and schools for physically or mentally handicapped or gifted children. These establishments were exempt if they met the basic 50 percent in State sales test and the 75 percent retail sales test of section 13(a)(2). The 1966 amendments to the Act repealed sections 13(a)(2) (ii) and (iii). Now to be exempt under section 13(a)(2) hotels, motels, and restaurants must meet the same tests as other retail or service establishments (see § 779.337). Seasonal amusement or recreational establishments and motion picture theaters now have special exemptions from both the minimum wage and overtime pay provisions of the Act as provided by the 1966 amendments in sections 13(a)(3) and 13(a)(9) respectively.

(b) Certain establishments which were previously exempt under section 13(a)(2) prior to the 1966 amendments have been specifically excluded from this exemption as a result of the amendments, even though they may still qualify as retail or service establishments under the definition of such an establishment in that section. These are hospitals, institutions primarily engaged in the care of the sick, the aged, the mentally ill or defective residing on the premises of the institution, and schools for physically or mentally handicapped or gifted children. However, such institutions have been recognized as having a retail concept and where the nature of their operations has not changed and where they otherwise satisfy the Act's definition of a "retail or service establishment", certain food service employees employed by such institutions will be considered to be exempt from the Act's overtime pay provisions under section

13(b)(18), exemptions for their administrative or executive employees will not be defeated by nonexempt work occupying less than 40 percent of the employee's time, and full-time students may be employed in accordance with the special minimum wage provisions of section 14 of the Act and Part 519 of this chapter.

§ 779.339 More than 50 percent intrastate sales required.

The first test specified in section 13(a)(2) is that more than 50 percent of the sales of goods or of services (or of both) of a "retail or service establishment" (measured by annual dollar volume) must be made "within the State in which the establishment is located". This limitation means that such establishment must be primarily engaged (more than 50 percent) in selling to or serving customers within its State. If the establishment is engaged to the extent of 50 percent or more in selling to or serving customers outside the State of its location, the requirement is not met and the establishment cannot qualify for exemption.

§ 779.340 Out-of-State customers.

Whether the sale or service is made to an out-of-State customer is a question of fact. In order for a customer to be considered an out-of-State customer, some specific relationship between him and the seller has to exist to indicate his out-of-State character. Sales made to the casual cash-and-carry customer of a retail or service establishment, who, for all practical purposes, is indistinguishable from the mass of customers who visit the establishment, are sales made within the State even though the seller knows or has reason to believe, because of his proximity to the State line or because he is frequented by tourists, that some of the customers who visit his establishment reside outside the State. If the customer is of that type, sales made to him are sales made within the State even if the seller knows in the particular instance that the customer resides outside the State. On the other hand, a sale is made to an out-of-State customer and, therefore, is not a sale made "within the State" in which the establishment is located, if delivery of the goods is made outside the State. It should be noted that sales of goods or services that are conditioned upon acceptance or rejection by an out-of-State source are interstate sales and not sales made within the State for purposes of section 13(a)(2). For example, a contract entered into in the State where the customer resides for the delivery of a magazine to the customer's residence, is an interstate sale if the contract must be approved by the out-of-State home office of the company publishing the magazine before it becomes effective.

§ 779.341 Sales "made within the State" and "engagement in commerce" distinguished.

Sales to customers located in the same State as the establishment are sales made "within the State" even though such sales may constitute engagement in interstate commerce as where the sale (a) is made pursuant to prior orders from customers for goods to be obtained from outside the State; (b) contemplates the purchase of goods from outside the State to fill a customer's order; or (c) is made to a customer for use in interstate commerce or in production of goods for such commerce.

Computing Annual Dollar Volume and Combination of Exemptions

§ 779.342 Methods of computing annual volume of sales.

The tests as to whether an establishment qualifies for exemption under section 13(a)(2) of the Act are specified in terms of the "annual dollar volume of sales" of goods or of services (or both) and percentages thereof. The "annual dollar volume of sales" of an establishment consists of the gross receipts from all sales of the establishment during a 12-month period. The methods of computing it for purposes of determining whether the establishment qualifies under the tests of the exemption are the same as the methods of calculating whether the annual gross volume of sales or business of an enterprise or an establishment meets the statutory dollar tests for coverage. These are discussed in §§ 779.265 to 779.269. However, for purposes of the exemption tests the specified percentages are based on annual dollar volume before deduction of those taxes which are excluded in determining whether the $250,000 test is met. The exemption tests are in terms of the annual dollar volume of the establishment. This will include dollar volume from transactions with other establishments in the same enterprise, even though such transactions within an enterprise may not be part of the annual gross volume of the enterprise's sales made or business done (see § 779.259).

§ 779.343 Combinations of exemptions.

(a) An employee may be engaged in a particular workweek in two or more types of activities for each of which a specific exemption is provided by the Act. The combined work of the employee during such a workweek may not satisfy the requirements of either exemption. It is not the intent of the Act, however, that an exemption based on the performance of one exempt activity should be defeated by the performance of another activity which has been made the basis of an equivalent exemption under another provision of the Act. Thus, where an employee during a particular workweek is exclusively engaged in performing two or more activities to which different exemptions are applicable, each of which activities considered separately would be an exempt activity under the applicable exemption if it were the sole activity of the employee for the whole workweek in question, as a matter of enforcement policy the employee will be considered exempt during such workweek. If the scope of such exemptions is not the same, the exemption applicable to the employee will be equivalent to that provided by whichever exemption provision is more limited in scope.

(b) In the case of an establishment which sells both goods and services at retail and which qualifies as an exempt establishment under section 13(a)(2), but cannot, as a whole, meet the tests of section 13(a)(4) because it sells services as well as goods, a combination of section 13(a)(2) and 13(a)(4) exemptions may nevertheless be available for employees of the establishment who make or process, on the premises, goods which it sells. Such employees employed by an establishment which, as a whole, meets the tests set forth in section 13(a)(2), will be considered exempt under this combination exemption if the establishment, on the basis of all its activities other than sales of services, would meet the tests of section 13(a)(4).

(c) Where two or more exemptions are applicable to an employee's work or employment during a workweek and where he may be exempt under a combination of exemptions as stated above, the availability of a combination exemption will depend on whether the employee meets all the requirements of each exemption which it is sought to combine.

§ 779.344 [Reserved]

Engaging in Manufacturing and Processing Activities; Section 13(a)(4)

§ 779.345 Exemption provided in section 13(a)(4).

The section 13(a)(4) exemption (see § 779.301) exempts any employee employed by a retail establishment which meets the requirements for exemption under section 13(a)(2), even though the establishment makes or processes on its own premises the goods that it sells, provided, that more than 85 percent of such establishment's annual dollar volume of sales of the goods so made or processed is made within the State in which the establishment is located, and other prescribed tests are met.

§ 779.346 Requirements for exemption summarized.

An establishment to qualify for exemption under section 13(a)(4) must be an exempt retail establishment under section 13(a)(2); that is, 75 percent of its annual dollar volume of sales of goods must not be for resale, 75 percent of its annual dollar volume of sales of goods must be recognized as retail in its industry, over 50 percent of its annual dollar volume of sales of goods must be made within the State in which the establishment is located, and its annual dollar volume of sales must be under $250,000. In addition, the establishment must meet the following three tests:

(a) The establishment must be recognized as a retail establishment in the particular industry.

(b) The goods which the exempt establishment makes or processes must be made or processed at the establishment which sells the goods.

(c) More than 85 percent of the establishment's annual dollar volume of sales of the goods which it makes or processes must be made within the State in which

the establishment is located. (See Act, section 13(a)(2); H. Rept. No. 1453, 81st Cong. first session, p. 27; Arnold v. Ben Kanowsky, Inc., 361 U.S. 388.)

§ 779.347 Exemption limited to "recognized retail establishment"; Factories not exempt.

The section 13(a)(4) exemption requires the establishment to be recognized as a retail establishment in the particular industry. This test limits the exemption to retail establishments only, and excludes factories as such and establishments to which the retail concept does not apply. In other words this test requires that the establishment as a whole be recognized as a retail establishment although it makes or processes at the establishment the goods it sells. Typical of the establishments which may be recognized as retail establishments under the exemption are custom tailor shops, candy shops, ice cream parlors, bakeries, drug stores, optometrist establishments, retail ice plants and other local retail establishments which make or process the goods they sell and meet the other tests for exemption. Clearly factories as such are not "recognized retail establishments" and would not be eligible for this exemption. (See 95 Cong. Rec. pp. 11001, 11200, 11216, and 14942.)

§ 779.348 Goods must be made at the establishment which sells them.

(a) Further to make certain that the exemption applies to retail establishments only and not to factories, an additional requirement of the exemption is that the goods which the exempt establishment makes or processes must be made or processed at the establishment which sells the goods. The exemption does not apply to an establishment which makes or processes goods for sale to customers who will go to other places to buy them. Thus an establishment that makes or processes any goods which the employer will sell from another establishment, is not exempt. If the establishment making the goods does not sell such goods but makes them for the purpose of selling them at other establishments the establishment making the goods is a factory and not a retail establishment.

(b) Where the making or processing of the goods takes place away from the selling establishment, the section 13(a)(4) requirement that both the making or processing and selling take place at the same establishment cannot be met. This will be true even though the place at which the goods are made or processed services the retail selling establishment exclusively. In such a situation, while the selling establishment may qualify for exemption under section 13(a)(2), the separate establishment at which the goods are made or processed will not be exempt. The latter is a manufacturing establishment. For example, a candy kitchen manufacturing candy for sale at separate retail outlets is a manufacturing establishment and not a retail establishment. (Fred Wolferman, Inc. v. Gustafson, 169 F. 2d 759 (CA-8).)

(c) The fact that goods made or processed on the premises of a bona fide retail establishment are sold by the establishment through outside salesmen (as, for example, department store salesmen taking orders from housewives for draperies) will not defeat the exemption if otherwise applicable. On the other hand, in the case of a factory or similar establishment devoted to making or processing goods, the fact that its goods are sold at retail by outside salesmen provides no ground for recognizing the establishment as a retail establishment or qualifying it for exemption.

§ 779.349 The 85-percent requirement.

The final requirement for the section 13(a)(4) exemption is that more than 85 percent of the establishment's sales of the goods it makes or processes, measured by annual dollar volume, must consist of sales made within the State in which the establishment is located. A retail establishment of the type intended to be exempt under this exemption may also sell goods which it does not make or process; the 85-percent requirement applies only to the sales of goods which are made or processed at the establishment. This must not be confused with the additional test which requires that the establishment, to be exempt, must derive more than 50 percent of its entire annual dollar volume of sales of goods from sales made within the State. (See § 779.339.) In other words, more than 85 percent of the establishment's annual dollar volume of sales of goods made or processed at the establishment, and more than 50 percent of the establishment's total annual dollar volume of sales of all the goods sold by the establishment, must be derived from sales made within the State. An establishment will not lose an otherwise applicable exemption under section 13(a)(4) merely because some of its sales of goods made or processed at the establishment are sales for resale or are not recognized as retail sales in the particular industry. Sales for resale, such as wholesale sales, and other sales not recognized as retail sales in the industry, will be counted in the 25-percent tolerance permitted by the exemption. (Cf. Arnold v. Ben Kanowsky, Inc., 361 U.S. 388.) Thus, for example, a bakery otherwise meeting the tests of 13(a)(4) making and selling baked goods on the premises nevertheless will qualify as an exempt retail establishment even though it engages in the sale of baked goods to grocery stores for resale if such sales, together with other sales not recognized as retail in the industry, do not exceed 25 percent of the total annual dollar volume of the establishment.

§ 779.350 The section 13(a)(4) exemption does not apply to service establishments.

The section 13(a)(4) exemption applies to retail establishments engaged in the selling of goods. It does not apply to service establishments. If the establishment is a service establishment, it must qualify under section 13(a)(2) in order to be exempt. A retail establishment selling goods, however, also may perform services incidental or necessary to the sale of such goods, such as a delivery service by a bakery store or installation of antennas by a radio dealer for his customers, without affecting the character of the establishment as a retail establishment qualified for exemption under section 13(a)(4).

ENGAGING IN CONTRACT TELEGRAPH AGENCY OPERATION; SECTION 13(a)(11)

§ 779.351 Exemption provided.

Section 13(a)(11) (See § 779.301) exempts from sections 6 and 7 of the Act any employee or proprietor who is engaged in handling telegraphic messages for the public in a retail or service establishment which qualifies as an exempt retail or service establishment under section 13(a)(2), if the conditions specified in section 13(a)(11) are met and the provisions of sections 6 and 7 of the Act would not otherwise apply.

§ 779.352 Requirements for exemption.

The requirements of the exemption are: (a) The establishment in which the employee or proprietor works must qualify as an exempt retail or service establishment under section 13(a)(2) of the Act; (b) the employee or proprietor must be engaged in handling telegraphic messages for the public pursuant to an agency or contract arrangement with a telegraph company; (c) such employee or proprietor must be one to whom the minimum wage and overtime pay provisions of the Act would not apply in the absence of such handling of telegraphic messages (See Western Union Tel. Co. v. McComb 165 F. 2d 65 (CA-6), certiorari denied, 333 U.S. 862); and (d) the exemption applies only where the telegraphic message revenue does not exceed $500 a month. For purposes of this exemption only, in determining whether a retail or service establishment meets the percentage tests contained in section 13(a)(2) of the Act, the receipts from the telegraphic message agency will not be included.

CLASSIFICATION OF SALES AND ESTABLISHMENTS IN CERTAIN INDUSTRIES

§ 779.353 Basis for classification.

The general principles governing the application of the 13(a)(2) and 13(a)(4) exemptions are explained in detail earlier in this subpart. It is the purpose of the following sections to show how these principles apply to establishments in certain specific industries. In these industries the Divisions have made special studies, held hearings or consulted with representatives of industry and labor, to ascertain the facts. Based upon these facts the following determinations have been made as to which sales or establishments are, and which are not, recognized as retail in the particular industry.

LUMBER AND BUILDING MATERIALS DEALERS

§ 779.354 Who may qualify as exempt 13(a)(2) or 13(a)(4) establishments.

(a) *Section 13(a)(2).* An establishment engaged in selling lumber and building materials may qualify as an exempt retail or service establishment

under section 13(a)(2) of the Act if it meets all the requirements of that exemption. It must appear that:

(1) The establishment is not in an enterprise described in section 3(s) of the Act or, if it is, its annual dollar volume of sales (exclusive of excise taxes at the retail level which are separately stated) is less than $250,000; and

(2) More than 50 percent of the establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located; and

(3) 75 percent or more of the establishment's annual dollar volume of sales of goods or services (or of both) is made from sales which are not for resale and are recognized as retail sales of goods or services in the industry.

These requirements are further explained in §§ 779.301–779.343.

(b) *Section 13(a)(4).* An establishment which makes or processes lumber and building materials which it sells may qualify as an exempt establishment under section 13(a)(4) of the Act if it meets all the requirements (see Arnold v. Kanowsky, 361 U.S. 388) of that exemption. It must appear that:

(1) The establishment qualifies as an exempt retail establishment under section 13(a)(2) (see paragraph (a) of this section and § 779.350); and

(2) The establishment is recognized as a retail establishment in the industry (see § 779.347 and paragraph (c) of this section); and

(3) The goods which such establishment makes or processes for sale are made or processed at the retail establishment which sells them (see § 779.348); and

(4) More than 85 percent of the annual dollar volume derived by the retail establishment from sales of goods so made or processed therein is made within the State in which the establishment is located (see §§ 779.349, 779.339–779.341).

(c) *Establishments recognized as retail in the industry.* An establishment which meets the requirements for exemption under section 13(a)(4) which are stated in subparagraphs (1), (3), and (4) of paragraph (b) of this section is recognized as a retail establishment in the industry within the meaning of subparagraph (2) of paragraph (b) of this section if its annual dollar volume of sales of goods made or processed at the establishment does not exceed 50 percent of the annual dollar volume which it derives from sales that are recognized as retail and are not made for resale.

(d) *Establishments lacking a "retail concept."* The exemptions provided by sections 13(a)(2) and 13(a)(4) of the Act do not apply to establishments in an industry in which there is no traditional concept of retail selling or servicing (see § 779.316), such as the establishment of a building contractor (see § 779.317; Goldberg v. Dakota Flooring Co., 15 WH Cases 305), or a factory (see § 779.347).

§ 779.355 Classification of lumber and building materials sales.

(a) *General.* In determining, for purposes of the section 13(a)(2) and (4) exemptions, whether 75 percent of the annual dollar volume of the establishment's sales which are not for resale and are recognized as retail in the industry, such sales will be considered to include all sales of lumber and building materials by the establishment which meet all the requirements for such classification as previously explained in this subpart, but will not be considered to include the transactions noted in paragraphs (b) and (c) of this section, which do not meet the statutory tests:

(b) *Transactions not recognized as retail sales.* (See §§ 779.314–779.329. Dollar volume derived from the following is not made from sales or services which are recognized as retail in the industry:

(1) Contracts to build, maintain, or repair buildings or other structures, or sales of services involving performance of typical construction activity or any other work recognized as an activity of a contracting business rather than a function of a retail merchant;

(2) Sales of lumber and building materials in which the seller agrees to install them for the purchaser, where the installation is not limited to services that are merely incidental to the sale and delivery of such materials but includes a substantial amount of activity such as construction work which is not recognized as retail (for example, sale and installation of roofing, siding, or insulation). A sale of such materials which would otherwise be recognized as retail (contracts described in subparagraph (1) are outside this category) may be so recognized notwithstanding the installation agreement, however, to the extent that the sales value of the materials is segregated and separately identified in the transaction;

(3) Sales in direct carload shipments; that is, where the materials are shipped direct in carload lots from the dealer's supplier to the dealer's customer;

(4) Sales of specialized goods (some examples are logs, ties, pulpwood, telephone poles, and pilings). Such specialized items are of the type which the general consuming public does not ordinarily have occasion to use (cf. § 779.318 and Mitchell v. Raines, 238 F. 2d 186), and the sales of such items are not recognized as retail in the industry;

(5) Sales made pursuant to formal bid procedures, such as those utilized by the Federal, State, and local governments and their agencies, involving the issuance by the buyer of a formal invitation to bid on certain merchandise for delivery in accordance with prescribed terms and specifications.

(c) *Sales for resale.* (See §§ 779.330–779.336.) Examples of sales which cannot be counted toward the required 75 percent because they are for resale include:

(1) Sales of lumber and building materials sold to other dealers for resale in the same form;

(2) Sales to industrial concerns for resale in an altered form or as a part or ingredient of other goods;

(3) Sales to contractors or builders for use in the construction, repair, or maintenance of commerical or industrial structures or any other structures not specifically included in section 3(n) of the Act (Sucrs. de Mayal v. Mitchell, 280 F. 2d 477, certiorari denied 364 U.S. 902; and see Arnold v. Kanowsky, 361 U.S. 388, 394, footnote 10, and §§ 779.335–779.336);

(4) Transfers of goods by an employer, who is a dealer in lumber and building materials and who also acts in the capacity of a building contractor or speculative builder, from or through his building materials establishment to his building business for the construction, maintenance, or repair of commercial property or any other property not excepted in section 3(n) of the Act. (See § 779.336.)

§ 779.356 Application of exemptions to employees.

(a) *Employees who may be exempt under sections 13(a)(2) and 13(a)(4).* These exemptions apply on an establishment basis (see §§ 779.302–779.306). Accordingly, where an establishment of a dealer in lumber and building materials qualifies as an exempt retail or service establishment under section 13(a)(2) or as an exempt establishment under section 13(a)(4), as explained in § 779.354, the exemption from the minimum wage and overtime pay requirements of the Act provided by such section will apply, subject to the limitations hereafter noted in this section, to all employees who are employed "by" such establishment (see §§ 779.307–779.311) in activities within the scope of its business (§ 779.308) and who are not employed by the employer in performing central office or warehouse work of an organization operating several such establishments (§ 779.310; McComb v. W. E. Wright Co., 168 F. 2d 40, cert. denied 335 U.S. 854). Neither exemption extends to employees employed in performing the work of a nonexempt establishment (§ 779.311) or such activities as construction work. Employees employed in making and processing of lumber and building materials for sale do not come within the section 13(a)(2) exemption; they are exempt only if employed by an establishment which qualifies as an exempt establishment under section 13(a)(4) as explained in § 779.354 and if their work in the making or processing of such materials is done at such establishment. How duties relating to the processing or manufacturing of such materials affect the application of these exemptions is discussed in further detail in paragraphs (b) and (c) of this section.

(b) *Processing and manufacturing activities.* The performance, in an establishment which sells lumber and building materials at retail, of activities such as cutting lumber to a smaller size or dressing lumber in accordance with a customer's request or assembling window and door frames received in "knocked-down" condition, constitutes processing incidental to the sales of such materials. Such activities are not considered manufacturing and will not affect the applicability of the section 13(a)(2) exemption to the establishment or to the employees who perform them. However,

whenever lumber is cut or dressed for sale, or fabricated products are manufactured for sale (for example, windows, door frames, benches, pig troughs, pallets, molding, sashes, cabinets, boxes), there is no exemption under section 13(a)(2). Employees performing such manufacturing activities at the establishment are exempt only if all the tests set forth in section 13(a)(4) are met (see pars. (b), (c), and (d) of § 779.354). Employees engaged in such activities at a manufacturing plant, central yard, or other place not qualifying as an exempt establishment under section 13(a)(2) and (4) are not exempt.

(c) *Employees serving exempt and nonexempt operations.* In lumber and building materials establishments which qualify for exemption under section 13(a)(2) but engage in some activities in which their employees are not exempt, such as construction or the making or processing of materials for sale where no exemption under section 13(a)(4) is applicable, there may be auxiliary employees of the establishment whose duties relate to both the exempt sales portion of the business and the nonexempt operations. For example, office workers may keep records of both the retail sales and construction or manufacturing activities; custodial workers may clean the entire premises, including portions devoted to nonexempt manufacturing; and warehousemen, messengers, and stock clerks may handle material for all departments, including material used in the nonexempt operations. These employees do not qualify for the exemption except when they are primarily engaged in the sales portion of the business and only incidentally perform clerical, custodial, or messenger service for the other operations. As an enforcement policy, such an employee will not be considered to be engaged in nonexempt activities which render him ineligible for exemption under section 13(a)(2) if, in the particular workweek, an insubstantial amount of his time (20 percent or less) is allocable to the clerical, custodial, or messenger services performed by him which relate to such nonexempt operations of the employer.

Coal Dealers

§ 779.357 May qualify as exempt 13(a)(2) establishments; classification of coal sales.

(a) *General.* A coal dealer's establishment may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. In determining for purposes of the 13(a)(2) exemption, whether 75 percent of the establishment's sales are recognized as retail in the particular industry, sales of coal to the consumer from a dealer's yard storage, where bulk is broken, are recognized as retail if they meet the requirements for such classification as previously explained in this subpart. It has been determined that the following sales do not meet such requirements and are not so recognized even if made from a dealer's yard storage:

(1) Sales where the delivery is made by railroad car or cargo vessel.

(2) Sales in a carload quantity or more for continuous delivery by truck from a dock, mine or public railroad facility.

(3) Sales of coal at a wholesale price. A wholesale price is a price comparable to or lower than the establishment's price in sales described in subparagraphs (1) and (2) of this paragraph or in sales to dealers (but not peddlers) for resale. If the establishment makes no such sales, the wholesale price is the price comparable to or lower than the price prevailing in the immediate area in sales described in subparagraphs (1) and (2) of this paragraph or in sales to dealers (but not peddlers) for resale.

(4) Sales of coal for use in the production of a specific product to be sold in which coal is an essential ingredient or the principal raw material, such as sales of coal for the production of coke, coal gas, coal tar, or electricity.

(b) *"Sales for resale."* In determining for purposes of the 13(a)(2) exemption, whether 75 percent of the establishment's sales are not made for resale, "sales for resale" will include sales of coal to other dealers, to peddlers, and sales of coal for use in the production of a specific product to be sold, in which coal is an essential ingredient or the principal raw material, such as sales of coal for the production of coke, coal gas, coal tar, or electricity. This is distinguished from sales of coal for use in the general manufacturing or industrial process such as the use in laundries, bakeries, nurseries, canneries, etc., or for space heating, which are not sales made for resale.

Ice Manufacturers and Ice Dealers

§ 779.358 May qualify as exempt 13(a)(2) or 13(a)(4) establishments.

(a) An establishment engaged in selling ice may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Similarly, an establishment making the ice it sells may qualify as an exempt establishment under section 13(a)(4) of the Act if it meets all the requirements of that exemption.

(b) In determining whether the requirements of the 13(a)(2) exemption, that 75 percent of the establishment's sales must not be made for resale and must be recognized as retail sales in the industry are met, sales of ice which meet all the requirements for such classification as previously explained in this subpart will be regarded as retail. The following sales have been determined not to qualify under the applicable tests for recognition as retail:

(1) Sales for resale.

(2) Sales of ice for icing railroad cars and for icing cargo trucks. However, sales of ice for the re-icing of cargo trucks are recognized as retail if such sales do not fall into the nonretail categories described in subparagraphs (4) and (5) of this paragraph.

(3) Sales of ice in railroad car lots.

(4) Sales of ice of a ton or more.

(5) Sales of ice at a price comparable to that charged by the establishment to dealers or, if no sales are made to dealers by the establishment, at a price comparable to or lower than the prevailing price to dealers in the area.

(c) The legislative history indicates that iceplants making the ice they sell are among the establishments which may qualify as retail establishments under the section 13(a)(4) exemption. It appears that all iceplants which sell at retail are establishments of the same general type, permitting no separate classifications with respect to recognition as retail establishments. Any iceplant which meets the tests of section 13(a)(2) will, therefore, be considered to be recognized as a retail establishment in the industry. Of course, the establishment must also meet all the other tests of section 13(a)(4) to qualify for the exemption.

(d) There are some iceplants which meet the section 13(a)(2) exemption requirements, but do not meet all of the section 13(a)(4) requirements. In such establishments, there may be some employees whose duties relate to both the sales portion of the business and the making or processing of ice. These employees will not qualify for exemption. However, in such establishments, there may be some employees who work primarily for the retail sales portion of the business and also perform incidental clerical, custodial, or messenger service for the manufacturing operation. For example, office workers may keep records of both the manufacturing activities and of the retail sales department, maintenance workers may clean up in both parts of the establishment, and messengers may perform services for both activities. If these employees spend relatively little time in the work related to the ice manufacturing portion of the business, they will not, as an enforcement policy, be regarded as engaged in the making or processing of ice. Such an auxiliary employee will thus be exempt under section 13(a)(2) in any workweek in which an insubstantial amount of his time (20 percent or less) is allocable to the clerical, messenger, or custodial work of the ice manufacturing operations.

Liquefied-Petroleum-Gas and Fuel Oil Dealers

§ 779.359 May qualify as exempt 13(a)(2) establishments.

A liquefied-petroleum-gas or fuel oil dealer's establishment may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. (It should be noted, however, that employees of certain enterprises engaged in the wholesale or bulk distribution of petroleum products may be partially exempt from the overtime provisions of the Act under section 7(b)(3). This overtime exemption is discussed in a separate bulletin, Part 794) of this chapter. Liquefied-petroleum-gas means butane, propane and mixtures of butane and propane gases.

§ 779.360 Classification of liquefied-petroleum-gas sales.

(a) *General.* In determining, under the 13(a)(2) exemption, whether 75 percent of the establishment's sales are not for resale and are recognized as retail sales in the industry, sales to the ultimate consumer of liquefied-petroleum-gas, whether delivered in portable cylinders or in bulk to the customer's storage tanks, are recognized as retail in the industry if they meet all the requirements for such classification as previously explained in this subpart. The following are not recognized as retail:

(1) Sales in single lot deliveries exceeding 1,000 gallons;

(2) Sales made on a competitive bid basis (this term covers sales made pursuant to an invitation to bid, particularly sales to Federal, State and local governments; sales made in a like manner to commercial and industrial concerns and institutions are also included); and

(3) Sales for use in the production of a specific product in which the gas is an essential ingredient or principal raw material, such as sales of liquefied-petroleum-gas for the production of chemicals and synthetic rubber; and

(4) Sales of liquefied-petroleum-gas for use as truck or bus fuel and the repair and servicing of trucks and buses used in over-the-road commercial transportation (including parts and accessories for such vehicles).

(b) *Sales or repairs of tanks.* Sales or repairs of tanks for the storage of liquefied-petroleum-gas are recognized as retail in the industry, except: (1) Any tank exceeding 1,000 gallons in capacity; (2) any tank sold or repaired on the basis described in subparagraph (2) of paragraph (a) of this section or for the purposes described in subparagraph (3) of paragraph (a) of this section; and (3) sales in quantity larger than involved in the ordinary sales to a farm or household customer.

(c) *Conversion units.* Sales and installation of units for converting pumps, stoves, furnaces and other equipment and appliances to the use of liquefied-petroleum-gas, are recognized as retail sales except: (1) Sales of the installation of such conversion units which involve substantial modification of the appliance or equipment; (2) sales and installation of such units to be used in industrial machinery or equipment; (3) sales and installations made on the basis described in subparagraph (2) of paragraph (a) of this section or in quantity as described in § 779.327; and (4) sales and installation of such units for vehicles mentioned in subparagraph (4) of paragraph (a) of this section.

§ 779.361 Classification of other fuel oil sales.

(a) Sales of fuel oil (as differentiated from sales of butane and propane gases) are classified as retail and nonretail sales as follows:

(1) Retail sales—all sales of grades No. 1, No. 2, and No. 3 of fuel oil direct to householders for their own domestic uses;

(2) Nonretail sales—

(i) All sales of grades No. 4, No. 5, and No. 6 fuel oil as these heavy oils are "special purpose" goods to which the retail sales concept has no application (See § 779.321);

(ii) All sales for resale including such sales to peddlers and other dealers (See §§ 779.331–779.334);

(iii) All sales made pursuant to a formal invitation to bid (See § 779.328(d)).

(b) In some cases the retail or nonretail status of an establishment may turn on sales other than those listed above. In such cases all the facts relative to such sales shall be considered in arriving at a determination. The classification of such sales depends upon whether they are recognized as retail sales. In such cases particular attention shall be given to the quantities involved and the prices charged.

FEED DEALERS

§ 779.362 May qualify as exempt 13(a)(2) or 13(a)(4) establishments.

(a) An establishment engaged in selling feed may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Similarly an establishment making and processing the feed it sells may qualify as an exempt establishment under section 13(a)(4) of the Act if it meets all the requirements of that exemption.

(b) In determining whether, under the 13(a)(2) exemption, 75 percent of the establishment's sales are not for resale and are recognized as retail sales in the industry, sales of feed to feeders will generally meet the requirements for such classification as previously explained in this subpart and will ordinarily be considered to be retail sales except for the following which do not meet the requirements and are not recognized as retail: Any sale of feed for shipment by railcar direct to the feeder; and sales made at a quantity discount which results in a price comparable to or lower than the establishment's price to dealers for resale or, if the establishment makes no sales to other dealers, at a price comparable to or lower than the price prevailing in the immediate area in sales by similar establishments to dealers for resale.

(c) The custom grinding and mixing of feed (including the addition of supplements) for feeders from the grain they themselves bring in will be regarded as the performance of a service, and not the making or processing of goods for sale under section 13(a)(4). Such services are recognized as retail services in the industry and the revenue derived therefrom will be included with the retail receipts of the establishment.

(d) Employees employed in the grinding and mixing of feed for sale (as distinguished from the grinding and mixing services discussed in paragraph (c) of this section) are engaged in the making or processing of goods and are therefore not exempt under section 13(a)(2). In order for these employees to be exempt, the establishment by which they are employed must meet all the requirements of section 13(a)(4), including the requirement that the establishment must be recognized as a retail establishment in the particular industry. The typical small feed mill engaged in selling goods to farmers appears to be recognized as retail in the industry. There are, of course, large mills which are essentially factories which are not so recognized. As an enforcement policy an establishment which qualifies for exemption under section 13(a)(2) will be considered to have met this requirement (1) if less than 50 percent of its retail sales are composed of feed manufactured at the establishment; or (2) if its sales of feeds manufactured at the establishment do not exceed 2,000 tons a year. In determining these tests for the applicability of the exemption, the computation of the sales of feed manufactured will be made on an annual basis in the same manner as set forth in §§ 779.265–779.269 for the computation of sales.

MONUMENT DEALERS

§ 779.363 May qualify as exempt 13(a)(2) or 13(a)(4) establishments.

(a) An establishment engaged in the sale of monuments and memorials may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Similarly, an establishment making or processing the monuments it sells may qualify as an exempt establishment under section 13(a)(4) of the Act if it meets all the requirements of that exemption.

(b) Monument dealers' establishments may be roughly divided into four types:

(1) Establishments which are engaged exclusively in selling monuments and memorials from designs. They receive their monuments from a manufacturer completely finished and lettered and they then erect the monuments.

(2) Establishments which purchase finished monuments from manufacturers, display them, carve or sand-blast lettering or incidental decoration to order, and set them in cemeteries or elsewhere.

(3) Establishments which purchase finished and semi-finished work. The semifinished work consists of sawed, steeled, or polished granite slabs or sand-rubbed marble. In such a case the establishments will cut ends, tops, or joints on dies and may shape a base.

(4) Establishments which purchase stone in rough form and perform all the fabricating operations in their own plants. In such a case the establishments may saw or line-up the rough stones, machine surface and polish the stone and then perform the other operations necessary to complete the monument. They may finish the monuments for display or on special order and then erect them.

(c) In determining whether, under the 13(a)(2) exemption, 75 percent of the establishment's sales are not for resale and are recognized as retail sales in the industry, the ordinary sale of a single tombstone or monument to the ultimate purchaser will be considered as a retail

sale within the meaning of the exemption. If the monument dealer establishment meets all the tests of the 13(a)(2) exemption all employees employed by it will be exempt under that exemption except those employees who are engaged in the making or processing of the goods. However, carving or sandblasting of lettering or incidental decoration or erecting the monuments, is considered processing incidental to the making of retail sales and would not defeat the 13(a)(2) exemption for employees performing such work. Employees who engage in processing semifinished or rough granite or marble or other stone into finished monuments such as the work performed in establishments described in subparagraphs (3) and (4) of (b) of this section are engaged in the making or processing of goods and are, for that reason, not exempt under section 13(a)(2). In order for those employees to be exempt the establishment by which they are employed must meet all the requirements of the 13(a)(4) exemption.

(d) One of the requirements of the section 13(a)(4) exemption is that an establishment which makes or processes goods must be recognized as a retail establishment in the industry. Generally an establishment described in subparagraph (3) of paragraph (b) of this section which receives finished stock and in addition receives some semifinished work, including sawed, steeled, or polished granite slabs or sand-rubbed marble, etc., and performs such operations as cutting ends, tops, or joints on the dies, is a type of establishment which is recognized as a retail establishment in the industry. On the other hand, those establishments which characteristically engage in the sawing or lining up of rough stone, or in the machine surfacing and polishing of stone, such as the activities performed in an establishment described in (4) of paragraph (b) of this section, are not recognized as retail establishments in the particular industry within the meaning of section 13(a)(4). Therefore, their employees who engage in such processing of monuments are not exempt under this section of the Act.

Frozen-Food Locker Plants

§ 779.364 May qualify as exempt 13(a)(2) or 13(a)(4) establishments.

(a) An establishment engaged in providing frozen-food locker service to farmers and other private individuals and rendering services thereto may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Similarly, a frozen-food locker plant which also engages in slaughtering and dressing livestock or poultry for sale may qualify as an exempt establishment under section 13(a)(4) of the Act if it meets all the requirements of that exemption.

(b) *Activities of frozen-food locker plants.* Frozen-food locker plants provide locker service for the cold storage of frozen meats, fruits, and vegetables and engage in incidental activities such as the cutting of meat, cleaning, packaging or wrapping and quick freezing, of meats, fruits, or vegetables for such locker service. In such establishments lockers are rented principally to farmers and other private individuals for the purpose of storage by them of such goods for their own personal or family use. Storage space and related services may also be provided for business or commercial use such as to hotels, stores or restaurants, or to farmers or other customers who use it to store meat and other goods for future sale. Such locker plants may also engage in such activities as the custom slaughtering and dressing of livestock or poultry and the curing, smoking, or other processing of meat owned by farmers and other private individuals for storage by those customers either in their home freezers or in locker plants for the customers' personal or family use. The custom slaughtering or processing activities of such locker establishments may be performed on the premises of the establishments or at some location away from the establishment.

(c) *Classification of sales.* In determining whether, under the 13(a)(2) exemption, 75 percent of the establishment's sales are not for resale and are recognized as retail sales in the industry, the receipts from the locker service and the incidental activities mentioned in the first sentence of this section and from the slaughtering, dressing, or other processing of livestock or poultry performed for farmers and other private individuals for their own use, but not where the goods are to be sold to others by the customer, will be counted as receipts from sales of services recognized as retail in the industry. Receipts from commercial storage and activities incidental thereto and from the sale of hides, offal or other byproducts will be counted as receipts from sales of goods or services made for resale or which are not recognized as retail sales of goods or services in the industry.

(d) Some locker plant establishments also include a meat market of the type which slaughters its own livestock or poultry (as distinguished from the slaughtering performed as a service to customers on the customers' own livestock) and processes such meat for sale by it to the general public. In performing such operations as the slaughtering, curing, and smoking of meat and the rendering of fats for sale, the establishment is making or processing goods that it sells and is not performing retail services for its customers. Employees engaged in these activities in such an establishment, therefore, are not exempt under section 13(a)(2) but may be exempt if the establishment meets the tests of a combination 13(a)(2)–13(a)(4) exemption in accordance with the principles stated in § 779.343. As a general rule, such a meat market which slaughters its own livestock and sells its meat to the general public is a type of establishment which may be recognized as a retail establishment in the industry within the meaning of the 13(a)(4) exemption. Whether a particular establishment, however, is so recognized depends upon the facts of the case. It should be noted that where such slaughtering, curing or smoking is, for any reason, performed away from the premises of the establishment where the meat is sold, the employees engaged in such activities are not employees employed by a retail establishment which "makes or processes at the retail establishment the goods that it sells" within the meaning of the 13(a)(4) exemption and cannot, therefore, be exempt under that section.

Automotive Tire Establishments

§ 779.365 May qualify as exempt 13(a)(2) or 13(a)(4) establishments.

(a) An establishment engaged in the selling of tires, tubes, accessories and of repair services on tires may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Similarly, an establishment engaged in retreading or recapping tires may qualify as an exempt establishment under section 13(a)(4) of the Act if it meets all the requirements of that exemption.

(b) (1) In determining whether, under the 13(a)(2) exemption, 75 percent of the establishment's sales are not made for resale and are recognized as retail sales in the industry, sales other than those described hereinafter in the subparagraphs of this paragraph may be so counted if they meet all the requirements for such classification as previously explained in this subpart. Not eligible for inclusion in the requisite 75 percent are sales of goods that cannot be the subject of a retail sale because the goods are not of a "retailable" type or the sales of such goods lack the "retail concept" (see § 779.321). Nor can sales for resale be counted toward the 75 percent. For example, sales of tires, tubes, accessories or services to garages, service stations, repair shops, tire dealers and automobile dealers, to be sold or to be used in reconditioning vehicles for sale are sales for resale. Further, the sales of tires, tubes, accessories and tire repair services, including retreading and recapping, which are described in the following subparagraphs (2) through (7), are not recognized as retail in the industry.

(2) Sales made pursuant to a formal invitation to bid: Such sales are made under a procedure involving the issuance by the buyer of a formal invitation to bid on certain merchandise for delivery in accordance with prescribed terms and specifications. Sales to the Federal, State, and local governments are typically made in this manner.

(3) Sales to "national accounts" as known in the trades; that is, sales where delivery is made by the local tire dealer under a centralized pricing arrangement between the customer's national office and the tire manufacturer; payment may be made either to the local dealer or direct to the tire manufacturer under a centralized billing arrangement with the customer's national office.

(4) Sales to fleet accounts at wholesale prices: As used in this section, a "fleet account" is a customer operating

five or more automobiles or trucks for business purposes. Wholesale prices for tires, tubes, and accessories are prices equivalent to, or less than, those typically charged on sales for resale. If the establishment makes no sales of passenger car tires for resale, the wholesale price of such tires will be taken to be the price typically charged in the area on sales of passenger car tires for resale. If the establishment makes no sales of truck tires for resale, the wholesale price of such tires will be taken to be the price charged by the establishment on sales of truck tires to fleet accounts operating 10 or more commercial vehicles, or if the establishment makes no such sales, the wholesale price will be taken to be the price typically charged in the area on sales of truck tires to fleet accounts operating 10 or more commercial vehicles. (See Wirtz v. Steepleton General Tire, 383 U.S. 190, 202, rehearing denied 383 U.S. 963.)

(5) Sales of a tire rental service on a mileage basis known in the trade as "mileage contracts": This is a leasing arrangement under which a tire dealer agrees to provide and maintain tires or tubes for motor vehicles of a fleet account.

(6) Sales of servicing and repair work performed under a fleet maintenance arrangement on tires for trucks and other automotive vehicles whereby the establishment undertakes to maintain the tires or tubes for a fleet account at a price below the prevailing retail price.

(7) Sales, repair, recapping, or rental of truck or machinery tires suitable for use only on trucks or equipment of a specialized kind that cannot themselves be the subject of a retail sale because their lack of a concept of "retailability" as previously explained precludes the recognition of their sale as "retail" in any industry.

§ 779.366 Recapping or retreading tires for sale.

(a) Some automotive tire establishments engage in recapping and retreading work on tires which the establishment expects to sell in their reconditioned form. Such activities are not performed as a service for a customer but constitute manufacturing goods for sale. Employees performing such work may be exempt only if they are employed by an establishment which meets all the requirements of the 13(a)(4) exemption.

(b) For purposes of meeting the retail recognition requirement of section 13(a)(4), an establishment engaged in retreading or recapping of tires which qualifies for exemption under section 13(a)(2) is recognized as a retail establishment in the industry if not more than 50 percent of the annual dollar volume of its sales resulting from its retreading and recapping operations comes from the sale of tires retreaded and recapped for sale.

Commercial Stationers

§ 779.367 Commercial stationers may qualify as exempt 13(a)(2) establishments.

(a) A commercial stationer's establishment may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Where the establishment meets these requirements all employees employed by the establishment will be exempt, except any employees who are engaged in the making or processing of goods, such as printing and engraving. The commercial stationer ordinarily has a store on the street level located in the shopping section of the community where other stores are located and many people pass by. He has store clerks who sell over the counter to the consuming public and may have outside salesmen who sell to offices. He makes very few, if any, sales to other dealers for resale. He keeps in stock and displays the various items sold over the counter and by outside salesmen. The number of items in stock typically ranges from 5,000 to 15,000. Primarily, items sold are stationery, pens, pencils, blotters, briefcases, calendars, clocks, greeting cards, thumbtacks, typewriter ribbons, carbon paper, paper clips, ink, commercial envelopes and typewriter paper, filing supplies and similar items. In addition he may also sell filing cabinets, office desks and chairs, other items of office furniture and supplies and equipment generally, as well as standard and portable typewriters and certain other small office machines.

(b) In determining whether, under the 13(a)(2) exemption, 75 percent of the establishment's sales are recognized as retail sales, in the case of commercial stationery establishments which in general operate as described in § 779.367(a), the sales made which are of "Retailable" items and are not for resale will be recognized as retail if they meet the requirements for such classification as previously explained in this subpart. The following position is adopted for enforcement purposes: All sales other than for resale of stationery, office supplies and equipment, office furniture and office machinery commonly stocked by commercial stationers for sale to individual consumers as well as businesses, including typewriters, adding machines, small duplicating machines, checkwriters, and the like, will be considered to be retail except for the sales set out below:

(1) Sales made on a competitive bid basis. This term covers sales made pursuant to an invitation to bid, particularly sales to Federal, State, and local governments; sales made in a like manner to commercial and industrial concerns and institutions are also included.

(2) Sales made pursuant to a requirements contract or other contractual arrangement involving the sale of a large quantity of goods over a period of time with a substantially lower price structure for the individual deliveries than would prevail for the usual sales of the quantities delivered.

(3) Sales made at quantity discount of 30 percent or more from the price of the ordinary unit of sale.

(4) Sales of school supplies to municipalities, boards of education, or schools in the same manner as the sales of school supply distributors.

(5) Sales of job printing and engraving other than (1) sales of social printing and engraving and (2) sales of printing and engraving of business envelopes, letterheads, and calling cards.

(6) Sales of specialized machinery and equipment.

§ 779.368 Printing and engraving establishments not recognized as retail.

(a) An establishment which is engaged in printing and engraving is not recognized as a retail establishment for purposes of section 13(a)(4). Therefore, employees of a stationery establishment engaged in printing and/or engraving do not come within the exemption. This fact will not affect the exemption under section 13(a)(2) of employees of stationery establishments who are not engaged in printing or engraving.

(b) In a combined stationery and printing or engraving establishment there are employees who operate the machines in the printing or engraving department and there may be other employees who also perform work primarily or exclusively for that department. There are in addition various employees in such combined establishments whose work relates to the stationery portion of the business but who also perform some work for the printing department. For example, office workers may keep records of both the printing plant and stationery department, maintenance workers may clean up in both departments; and warehousemen, messengers and stock clerks may handle material for both departments. In some establishments these workers spend relatively little time in the work of the printing department. As an enforcement policy an auxiliary employee will not be considered to be engaged in the making or processing of goods for purposes of the exemption under section 13(a)(2) in any workweek in which an insubstantial amount of his time (20 percent or less) is allocable to the clerical, messenger, or custodial work of the printing department.

Funeral Homes

§ 779.369 Funeral home establishments may qualify as exempt 13(a)(2) establishments.

(a) *General.* A funeral home establishment may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that section. Where the establishment meets these requirements generally all employees employed by the establishment will be exempt except any employees who perform any work in connection with burial insurance operations (see paragraph (b)) or who spend a substantial portion of their workweek in ambulance service operations, as described in paragraph (e) below.

(b) *Burial insurance operations.* There is no retail concept applicable to the insurance business (see § 779.317). Burial associations which enter into burial insurance contracts are generally regulated by the State and the regulations governing such associations are included in State statutes under Insurance. The contracts issued are very similar in form and content to ordinary life insurance policies. Income received from such operations is nonretail income and employees

engaged in such work are not employed in work within the scope of the retail exemption (see § 779.308).

(c) *Accommodation items.* Amounts paid to funeral homes to cover the cost of "accomodation" items are part of the gross receipts of the establishment and are included in its annual gross volume of sales made or business done. Such items may include goods or services procured by the funeral home on behalf of the bereaved with or without profit but on its own credit or through cash payment by it, such as telegrams, long distance calls, newspaper notices, flowers, livery service, honoraria to participating personnel, transportation by common carrier, clothing for the deceased, and transcripts of necessary forms. For the purposes of determining the applicability of the retail or service establishment exemption, receipts of the funeral home in reimbursement for such services are considered derived from sales or services recognized as retail in the industry. Cash advances made as a convenience to a bereaved family are not included in computing the gross volume of sales made or business done when repaid. Of course, if interest is charged it would be included in the gross volume of sales and nonretail income.

(d) *Nonretail services.* Calling for and preparing bodies and crematory service for other funeral homes, burial insurance operations, and ambulance or livery transportation service (as distinguished from the use of ambulances or other vehicles as a necessary part of the undertaking, funeral, or burial services of the establishment), are some examples of a funeral home providing goods or services which will be "resold" or which are not recognized as retail.

(e) *Ambulance service.* The typical ambulance service establishment, engaged exclusively or nearly so in providing a specialized form of transportation for sick, injured, aged, or handicapped persons, is a part or branch of the transportation industry. Since there is no traditional retail concept in the transportation industry, such ambulance service establishments cannot qualify for the section 13(a)(2) exemption (see § 779.317). Income from the same typical ambulance services would be considered nonretail in applying the 25 percent tolerance for nonretail income in a funeral home. If an establishment engaged in a combination of funeral home and ambulance services meets all the tests for exemption under section 13(a)(2), as applied to the combined sales of both types of services, those of its employees who are engaged in the funeral home's activities and functions will be exempt as employees of a retail or service establishment. This exemption, however, does not apply to any employee regularly engaged in nonexempt ambulance transportation activities in any workweek when he devotes a substantial amount of his working time to such nonexempt work. More than 20 percent of the employee's working time in the workweek will, for enforcement purposes, be considered substantial.

(f) *Out-of-State sales.* An arrangement with a funeral home to embalm and ship human remains to a point outside the State for burial is not a sale within the State. The reverse situation where an out-of-State funeral director ships the remains to a funeral home to arrange for local interment also is not a sale within the State.

(g) *Work for more than one establishment.* Employees performing central office, supply, or warehouse functions for more than one funeral home establishment are not within the exemption (see § 779.310). However, where certain mortuaries may operate more than one exempt establishment and where employees such as embalmers employed by an exempt funeral home may be called upon in a given workweek to perform for another exempt establishment or establishments in the same enterprise work which is a part of the funeral home services sold by that establishment or establishments to customers, such employees do not lose the exemption where at all times during the workweek the employee is employed by one or the other of such exempt establishments either inside or outside the establishment in the activities within the scope of its own exempt business (see § 779.311(b)). In addition, where an establishment offering complete funeral home services also has outlying chapels where only the funeral services of the deceased persons are conducted, employees of the main establishment who are otherwise exempt do not lose the exemption by virtue of the activities which they may perform in connection with the funeral services held at the chapel. These activities are in such a case part of their employment by the exempt main establishment.

Cemeteries

§ 779.370 Cemeteries may qualify as exempt 13(a)(2) establishments.

(a) *General.* A cemetery may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that section, including the requirement that the retail or service establishment be open to the general public. So long as a cemetery is open to any persons of a particular religion rather than merely the members of a specific organization or place of worship, it will be considered for enforcement purposes to be "open to the general public."

(b) *Annual dollar volume.* As used in the Act, annual gross volume means the gross receipts from all the business activities of the establishment during a 12-month period (see §§ 779.265–779.269). Sums received from the following types of transactions are part of the annual gross volume of sales made or business done:

(1) Sales of lots or plots,

(2) Annual tax or assessment levied on lot owners, and

(3) Gifts or bequests.

Interest from any trust funds for permanent or current maintenance is also included in the annual gross volume of sales made or business done. The allocation of the gross receipts to any trust funds or other accounts of the establishment does not affect the annual gross volume.

(c) *Nonretail sales or income.* Sales of lots or plots to a burial society or a fraternal organization for the use of the members are sales for resale and as such may not be counted as part of the 75 percent of annual dollar volume of sales of goods or services which is not for resale and recognized as retail in the industry under section 13(a)(2). Such sales are counted as part of the annual gross volume in the period in which the transaction between the cemetery and the burial society or fraternal organization is completed. Any interest from trust funds or other investments also is not recognized as retail receipts under section 13(a)(2).

Automobile, Truck, Farm Implement, Trailer, and Aircraft Sales and Services

§ 779.371 Some automobile, truck, and farm implement establishments may qualify for exemption under section 13(a)(2).

(a) *General.* The specific exemption from the provisions of sections 6 and 7 of the Act that was provided in section 13(a)(19) prior to the 1966 amendments for employees of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks, or farm implements was repealed. However, some such establishments may qualify for exemption from both the minimum wage and overtime pay provisions of the Act under section 13(a)(2) as retail or service establishments. These are establishments whose annual dollar volume is smaller than the amount specified in section 13(a)(2) or in section 3(s)(1) and which meet all the other requirements of section 13(a)(2) (see § 779.337). (Such establishments which do not qualify for exemption under section 13(a)(2) may have certain employees who are exempt only from the overtime pay provisions of the Act under section 13(b)(10). Section 13(b)(10) is applicable not only to automobile, truck, and farm implement dealers but also to dealers in trailers and aircraft. The section 13(b)(10) exemption is discussed in § 779.372 below.)

(b) *Application of the 75-percent test.* In determining whether, under the section 13(a)(2) exemption, 75 percent of an automobile, truck, or farm implement establishment's sales of goods or services are not for resale and are recognized as retail, the requirements for such classification, including the existence of a retail concept, as explained previously in this subpart, and the specific applications in the industry of these requirements in accordance with the following principles, will govern the classification of sales made by such establishments. The sales of goods or services described in paragraph (c) of this section and in paragraph (e) (1) through (5) of this section may not be counted toward the required 75 percent. Such sales do not qualify as retail because they either are for resale, are outside the retail concept, or have been determined to lack the requisite recognition as retail sales or

services. Other sales of goods or services by the dealer can qualify if they meet the requirements previously explained.

(c) *Nonretail automobile and truck sales and servicing.* None of the following sales of automobiles, trucks, automotive parts, accessories, servicing and repair work will be considered as retail:

(1) Sales for resale: For example, sales of new or used automobiles and trucks, tires, accessories or services, to service stations, repair shops and automobile or truck dealers, where these establishments resell the various items or where they use them in repairing customers' vehicles or in reconditioning used cars for resale, are sales for resale. (Note that a "sale" for purposes of the Act need not be for profit—under section 3(k) it includes any "exchange * * * or other disposition".) However, internal transfers of such items between departments within the dealer's establishment, such as transfers of parts from the parts department to the service department of an automobile dealer's establishment, will not be considered sales for resale. Such transfers from one department to another will be disregarded in computing the establishment's sales for determining the applicability of this exemption.

(2) Sales made pursuant to a formal invitation to bid: Such sales are made under a procedure involving the issuance by the buyer of a formal invitation to bid on certain merchandise for delivery in accordance with prescribed terms and specifications. Sales to the Federal, State, and local governments are typically made in this manner.

(3) Fleet sales: Sales in a fleet quantity for business purposes (a sale of five or more cars or trucks at a time, for example); and sales to fleet accounts as described in subdivisions (i) and (ii) of this subparagraph. (As here used a "fleet account" is a customer operating five or more automobiles or trucks for business purposes).

(i) Automobiles and trucks: Sales and term leases of automobiles and trucks to national fleet accounts as designated by the various automotive manufacturers, at fleet discounts, and sales and term leases to other fleet accounts at discounts equivalent to those provided in sales to national fleet owners are not recognized as retail.

(ii) Automotive parts and accessories: Sales of parts and accessories to fleet accounts at wholesale prices are not recognized as retail. Wholesale prices are prices equivalent to, or less than, those typically charged on sales for resale.

(4) Sales and term leases of specialized heavy motor vehicles or bodies (16,000 pounds and over gross vehicle weight) and of tires, parts, and accessories designed for use on such specialized equipment. The following is a partial list illustrating the types of items of equipment not considered to qualify as subjects of retail sale:

(i) Single unit trucks, including—

Armored (money carrying).
Buses (integral).
Coal.
Drilling.
Dump.
Hook and ladder (fire department).
Chemical wagons (fire department).
Garbage.
Mixer.
Refrigerator.
Special public utility.
Steel haulers.
Street-cleaning.
Tank.
Wrecker.

(ii) Full trailers and semitrailers (tractor and semitrailer and truck and trailer combinations), including—

Auto carrier.
Coal.
Dump.
Garbage.
House carrier.
Low bed carry all.
Pole (lumber).
Refrigerator.
Tank.
Van.

(5) Sales of servicing and repair work peculiar to the servicing and repair of specialized vehicles referred to in paragraph (4), or performed under a fleet maintenance arrangement on trucks and other automotive vehicles whereby the establishment undertakes to maintain a customer's fleet at a price below the prevailing retail prices.

(6) Sales to motor carriers of services, fuel, equipment, or other goods or facilities by establishments commonly referred to as truck stops. Such establishments, which are physically laid out and specially equipped to meet the highway needs of the motor transportation industry, offer a variety of services to truckers on a "one-stop" basis, and provide services principally to motor carriers and their crews. They are an integral part of the interstate transportation industry and are not within the traditional retail concept. (See § 779.317.)

(7) Sales of diesel fuel (and LP gas) for use as truck or bus fuel and the repair and servicing of trucks and buses used in over-the-road commercial transportation (including parts and accessories for such vehicles) are specialized goods and services "which can never be sold at retail * * * whatever the terms of the sale." (Idaho Sheet Metal Works, Inc. v. Wirtz, 383 U.S. 190, 202, rehearing denied 383 U.S. 963; Wirtz v. Steepleton General Tire Company, Inc., 383 U.S. 190, 202, rehearing denied 383 U.S. 963). Sales of these items are nonretail whether made by truck stops or other establishments (see pars. (4) and (5)).

(d) *Nonspecialized truck parts, accessories and services.* Sales of parts and accessories which are of the type used by small trucks engaged in local transportation or by farm vehicles and are not nonretail under paragraph (c)(6) of this section will be tested under paragraphs (b) and (c)(3)(ii) of this section, even when made on occasion for use in larger vehicles. Likewise, repairs and servicing of a minor nature (such as tire repair, battery recharging, cleaning of fuel lines, or minor electrical rewiring) performed on any type vehicle will be considered retail in nature unless nonretail under paragraph (c)(6) or unless a fleet maintenance arrangement as in paragraph (c)(5) is present.

(e) *Farm implement sales.* Sales of farm machinery, such as equipment necessary for plowing, planting, thinning, weeding, fertilizing, irrigating, and harvesting of crops, and raising of livestock on the farm, and the repair work thereon, will be considered as retail (whether sold to farmers or nonfarmers) when they satisfy the tests referred to in paragraph (b) of this section. The following, which fail to satisfy these tests, must be classified as nonretail:

(1) Sales for resale: For example, sales of new or used machinery, parts, accessories or services to service stations, repair shops and other dealers, where these establishments resell these items or where they use them in repairing customers' farm implements or in reconditioning used farm implements for resale, are sales for resale. However, this does not apply to internal transfers of such items between departments within the dealer's establishment. Transfers of parts from the parts department to the service department of a farm implement dealer's establishment will not be considered sales for resale, and will be disregarded in computing the establishment's sales for determining the applicability of the section 13(a)(2) exemption.

(2) Sales made pursuant to formal invitation to bid. Such sales are made under a procedure involving the issuance by the buyer of a formal invitation to bid on certain merchandise for delivery in accordance with prescribed terms and specifications. Sales to Federal, State and local governments are typically made in this manner.

(3) Sales of specialized equipment not ordinarily used by farmers, such as:

Bulldozers.
Scrapers.
Land levelers.
Graders.
Cotton ginning machinery.
Canning and packing equipment.

(4) Sales of junk.

(5) Sales of machinery or equipment which are sold "installed", where the installation involves construction work. Installations which require extensive planning, labor and use of specialized equipment ordinarily constitute construction work. In such cases the cost of installation ordinarily is substantial in relation to the cost of the goods installed.

(f) *Quantity sales to farmers.* It should be noted that the concept of fleet sales discussed in paragraphs (c)(3) and (5) of this section is not applied to sales to farmers, even though the farmer uses five or more vehicles on his farm.

(g) *Particular activities which lack a retail concept.* Any receipts derived from warehousing, construction, including water well drilling, or manufacturing activities performed by the automobile, truck, or farm implement dealer are not receipts from retail sales. These activities and the manufacturing of farm implements are not retail activities.

§ 779.372 Nonmanufacturing establishments with certain exempt employees under section 13(b)(10).

(a) *General.* A specific exemption from only the overtime pay provisions of section 7 of the Act is provided in

section 13(b)(10) for certain employees of nonmanufacturing establishments engaged in the business of selling automobiles, trucks, trailers, farm implements, or aircraft. Section 13(b)(10) states that the provisions of section 7 shall not apply with respect to "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers." This exemption will apply irrespective of the annual dollar volume of sales of the establishment or of the enterprise of which it is a part.

(b) *Character of establishment and employees exempted.* (1) An establishment will qualify for this exemption if the following two tests are met:

(i) The establishment must not be engaged in manufacturing; and

(ii) The establishment must be primarily engaged in the business of selling automobiles, trailers, trucks, farm implements, or aircraft to the ultimate purchaser. If these tests are met by an establishment the exemption will be available for salesmen, partsmen, and mechanics, employed by the establishment, who are primarily engaged during the workweek in the selling or servicing of the named items. An explanation of the term "employed by" is contained in §§ 779.307–779.311. The exemption is intended to apply to employment by such an establishment of the specified categories of employees even if they work in physically separate buildings or areas, or even if, though working in the principal building of the dealership, their work relates to the work of physically separate buildings or areas, so long as they are employed in a department which is functionally operated as part of the dealership (H. Rept. No. 1366, 89th Cong., second session, page 42; Sen. Rept. No. 1487, 89th Cong., second session, page 32). However, the salesman, partsman, or mechanic, to qualify for exemption, must be "primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft." (H. Rept. No. 2004, 89th Cong., second session, pp. 7, 19).

(2) This exemption, unlike the former exemption in section 13(a)(19) of the Act prior to the 1966 amendments, is not limited to dealerships which qualify as retail or service establishments nor is it limited to establishments selling automobiles, trucks, and farm implements, but also includes dealers in aircraft and trailers.

(c) *"Salesman, partsman, or mechanic."* (1) As used in section 13(b)(10), a salesman is an employee who is employed for the purpose of and is primarily engaged in making sales or obtaining orders or contracts for sale of the vehicles or farm implements which the establishment is primarily engaged in selling. Work performed incidental to and in conjunction with the employee's own sales or solicitations, including incidental deliveries and collections, is regarded as within the exemption.

(2) As used in section 13(b)(10), a partsman is any employee employed for the purpose of and primarily engaged in requisitioning, stocking, and dispensing parts.

(3) As used in section 13(b)(10), a mechanic is any employee primarily engaged in doing mechanical work (such as get ready mechanics, automotive, truck, farm implement, or aircraft mechanics, body or fender mechanics, used car reconditioning mechanics, and wrecker mechanics) in the servicing of an automobile, trailer, truck, farm implement, or aircraft for its use and operation as such. This includes mechanical work required for safe operation as a vehicle, farm implement, or aircraft. The term does not include employees primarily performing such nonmechanical work as washing, cleaning, painting, polishing, tire changing, installing seat covers, dispatching, lubricating, or other nonmechanical work. Wrecker mechanic means a service department mechanic who goes out on a tow or wrecking truck to perform mechanical servicing or repairing of a customer's vehicle away from the shop, or to bring the vehicle back to the shop for repair service. A tow or wrecker truck driver or helper who performs no mechanical repair work is not exempt. When employed by an establishment qualifying under section 13(b)(10) which sells and services trailers, mechanics primarily engaged in servicing the trailers for their use and operation as such may qualify for the exemption. "Trailers" include a wide variety of nonpowered vehicles used for industrial, commercial, or personal transport or travel on the highways by attaching the vehicle to the rear of a separate powered vehicle. It is not yet clear under what circumstances and to what extent so-called "mobile homes" designed for residential uses other than in connection with the owner's travel can qualify as "trailers" within the meaning of the statute. (Compare Snell v. Quality Mobile Home Brokers (D.S.C.), 18 WH Cases 875, with Wirtz v. Louisiana Trailer Sales, 294 F. Supp. 76 (E.D. La.).) However, if and to the extent that they are operated and used as trailers, mechanics servicing them for such operation and use would appear to be performing work within the purview of the exemption provided for mechanics in section 13(b)(10), to the same extent as mechanics servicing automobiles, ordinary travel, boat, or camping trailers, trucks, and truck or tractor trailers for use and operation as such. On the other hand, there is no indication in the statutory language or the legislative history of any intent to provide exemption for mechanics whose work is directed to the habitability as a residence of a dwelling to be used as such on a fixed site in a particular locality, merely because the home is so designed that it may be moved to another location over the highways more readily than the traditional types of residential structures. Accordingly, servicemen checking, servicing, or repairing the plumbing, electrical, heating, air conditioning or butane gas systems, the doors, windows, and other structural features of mobile homes to make them habitable or more habitable as residences are, while so engaged, not deemed to qualify as "mechanic(s) * * * servicing * * * trailers" within the meaning of section 13(b)(10).

(4) Employees variously described as service manager, service writer, service advisor, or service salesman who are not themselves primarily engaged in the work of a salesman, partsman, or mechanic as described above are not exempt under section 13(b)(10). This is true despite the fact that such an employee's principal function may be disagnosing the mechanical condition of vehicles brought in for repair, writing up work orders for repairs authorized by the customer, assigning the work to various employees and directing and checking on the work of mechanics.

(d) *Primarily engaged.* As used in section 13(b)(10), primarily engaged means the major part or over 50 percent of the salesman's partsman's, or mechanic's time must be spent in selling or servicing the enumerated vehicles. As applied to the establishment, primarily engaged means that over half of the establishment's annual dollar volume of sales made or business done must come from sales of the enumerated vehicles.

§§ 779.373–779.380 [Reserved]

OTHER ESTABLISHMENTS FOR WHICH SPECIAL EXCEPTIONS OR EXEMPTIONS ARE PROVIDED

§ 779.381 Establishments within special exceptions or exemptions.

(a) As stated in § 779.338, the special exceptions provided in the 1961 amendments for hotels, motels, restaurants, hospitals, institutions for the sick, the aged, the mentally ill or defective, and schools for physically or mentally handicapped or gifted children have been removed. Seasonally operated amusement or recreational establishments and motion picture theaters also no longer are specifically exempt under section 13(a)(2), but have specific exemptions set out for them in sections 13(a)(3) and 13(a)(9) of the Act as amended in 1966.

(b) Hotels, motels, and restaurants continue to be eligible for exemption under section 13(a)(2), but must meet all the requirements of that section for exemption in the same manner as other retail or service establishments. However, a special overtime exemption is provided for such establishments, regardless of size, in the first part of section 13(b)(8). Hospitals, residential care establishments, and schools for physically or mentally handicapped or gifted children are specifically excluded by the Act from consideration for exemption under section 13(a)(2); however, residential care establishments are exempt from the overtime pay requirements of the Act under the second part of section 13(b)(8) as long as overtime premium of not less than one and one-half times the employee's regular rate of pay is paid to him

for time worked in excess of 48 hours in the workweek. In addition, section 7(j) of the amended Act provides a special overtime arrangement for hospital employees whereby overtime pay is due an employee after 8 hours in a day or 80 hours in a 14-day work period rather than on the basis of the 7-day workweek as is normally required by the Act. This provision, though, requires an agreement or understanding on the part of both the employer and the employee prior to the performance of the work. See § 778.601 of this chapter.

(c) The amendments of 1966 also repealed the exemption from both the minimum wage and overtime pay provisions which was in the Act for certain food service employees employed by retail or service establishments that were not exempt under section 13(a)(2). This exemption (formerly found in section 13(a)(20)) is now an exemption from the overtime provisions only and is set out in section 13(b)(18). Those establishments now excluded by the Act from consideration for exemption under section 13(a)(2) (hospitals, residential care establishments, etc.) may utilize this exemption where they meet the Act's definition of retail or service establishment in the last sentence of section 13(a)(2) and the conditions set out in section 13(b)(18). Likewise, the special exemption for any employee of a retail or service establishment primarily engaged in the business of selling automobiles, trucks, or farm implements was repealed by the 1966 amendments. In its stead the overtime exemption set out in section 13(b)(10) and previously discussed in § 779.372 was provided for certain employees of any nonmanufacturing establishment primarily engaged in the business of selling automobiles, trailers, trucks, farm implements, or aircraft to the ultimate consumer.

(d) A special exemption from the overtime pay requirements is also included in the amended Act for bowling establishments which do not meet the tests under section 13(a)(2) for exemption as a retail or service establishment. Section 13(b)(19) states that the overtime pay requirements of the Act shall not apply with respect to "any employee of a bowling establishment if such employee receives compensation for employment in excess of 48 hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed." Unlike the overtime pay exemption in section 13(b)(18), this exemption is not dependent upon the establishment meeting the definition of retail or service establishment.

Hotels and Motels

§ 779.382 May qualify as exempt 13(a)(2) establishments.

A hotel or motel establishment may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act. However, the establishment must meet all of the requirements of section 13(a)(2) (see § 779.337). In determining whether an establishment is a retail or service establishment within the meaning of section 13(a)(2) the dollar volume received from the leasing or rental of space to other than transient members of the general public cannot be counted as derived from retail sales of goods or services. Therefore, receipts from tenants who are not transient guests (see § 779.383(c)) must be included in the 25 percent tolerance provided for sales for resale or sales not recognized as retail.

§ 779.383 "Hotel" and "motel" exemptions under section 13(b)(8).

(a) *General.* A hotel or motel establishment may qualify for exemption from the Act's overtime pay requirements, even if it is in an enterprise described in section 3(s) and is not exempt under section 13(a)(2) because it exceeds the monetary test for exemption under that section. The first part of section 13(b)(8) provides that the overtime provisions of section 7 of the Act shall not apply with respect to "any employee employed by an establishment which is a hotel, motel * * *" The 13(b)(8) exemption is applicable irrespective of the annual dollar volume of sales of a hotel or motel establishment or of the enterprise of which it is a part.

(b) *Definition of "hotel".* The term "hotel" as used in section 13(b)(8) means an establishment known to the public as a hotel, which is primarily engaged in providing lodging or lodging and meals for the general public. Included are hotels operated by membership organizations and open to the general public and apartment hotels which provide accommodations for transients. However, an establishment whose income is primarily from providing a permanent place of residence or from providing residential facilities complete with bedrooms and kitchen for leased periods longer than 3 months would not be considered a hotel within the meaning of the Act. An apartment or residential hotel is not considered a hotel for purposes of section 13(b)(8) unless more than half of its annual dollar volume is derived from providing transient guests representative of the general public with lodging or lodging and meals. (See paragraph (c).) Establishments in which lodging accommodations are not available to the public are not included. Also excluded from the category of hotels are rooming and boarding houses, and private residences commonly known as tourist homes. Resort or other hotels even if they operate seasonally are regarded as hotel. (See Cong. Rec., August 25, 1966, pages 19729–19732; Cong. Rec., August 26, 1966, pages 19907–19911.)

(c) *"Transient guests".* In determining who are "transient guests" within the meaning of § 779.382 and paragraph (b) of this section, as a general rule the Department of Labor would consider as transient a guest who is free to come and go as he pleases and who does not sojourn in the establishment for a specified time or permanently. A transient is one who is entertained from day to day without any express contract or lease and whose stay is indefinite although to suit his convenience it may extend for several weeks or a season.

(d) *Definition of "motel".* The term "motel" as used in section 13(b)(8) means an establishment which provides services similar to that of a "hotel" described in paragraph (b) of this section, but which caters mostly to the motoring public, providing it with motor car parking facilities either adjacent to the room or cabin rented or at some other easily accessible place. Included in the term "motel" are those establishments known to the public as motor hotels, motor lodges, motor courts, motor inns, tourist courts, tourist lodges and the like.

(e) *Hotel and motel establishments engaged in other activities.* The primary function of a hotel or motel is to provide lodging facilities to the public. In addition, most hotels or motels provide food for their guests and many sell alcoholic beverages. These establishments also may engage in some minor revenue producing activities; such as, the operation of valet services offering cleaning and laundering service for the garments of their guests, news stands, hobby shops, the renting out of their public rooms for meetings, lectures, dances, trade exhibits and weddings. The exception provided for "hotels" and "motels" in section 13(b)(8) will not be defeated simply because a "hotel" or a "motel" engages in all or some of these activities, if it is primarily engaged in providing lodging facilities, food and drink to the public.

Motion Picture Theaters

§ 779.384 May qualify as exempt establishments.

Section 13(a)(9) of the Act as amended in 1966 exempts from the minimum wage and overtime pay requirements "any employee employed by an establishment which is a motion picture theater." This exemption will be applicable irrespective of the annual dollar volume of sales of such establishment or of the enterprise of which it is a part. A motion picture theater may also qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if the establishment meets all requirements of the exemption, discussed above in §§ 779.337 to 779.341. The term "motion picture theater" as used in section 13(a)(9) means a commercially operated theater primarily engaged in the exhibition of motion pictures with or without vaudeville presentations. It includes "drive-in motion picture theaters" commonly known as "open air" or "drive-in" theaters, but does not include such incidental exhibition of motion pictures as those offered to passengers on aircraft. "Legitimate theaters" primarily engaged in exhibiting stage productions are not "motion picture theaters."

Seasonal Amusement Or Recreational Establishments

§ 779.385 May qualify as exempt establishments.

An amusement or recreational establishment operating on a seasonal basis may qualify as an exempt establishment under section 13(a)(3) of the Act, added by the 1966 amendments, even if it does

not meet all the requirements of the 13(a)(2) exemption. Section 13(a)(3) exempts from the minimum wage and overtime pay requirements of the Act "any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any 6 months of the year were not more than 33⅓ percentum of its average receipts for the other 6 months of such year". "Amusement or recreational establishments" as used in section 13(a)(3) are establishments frequented by the public for its amusement or recreation and which are open for 7 months or less a year or which meet the seasonal receipts test provided in clause (B) of the exemption. Typical examples of such are the concessionaires at amusement parks and beaches. (S. Rept. 145, 87th Cong., first session, p. 28; H. Rept. 75, 87th Cong., 1st Sess., p. 10.)

RESTAURANTS AND ESTABLISHMENTS PROVIDING FOOD AND BEVERAGE SERVICE

§ 779.386 Restaurants may qualify as exempt 13(a)(2) establishments.

(a) A restaurant may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act. However, the establishment must meet all of the requirements of section 13(a)(2) (see § 779.337). It should be noted that a separate exemption from the overtime pay provisions of the Act only is provided in section 13(b)(18) for certain food service employees employed by establishments other than restaurants if the establishment meets the definition of a retail or service establishment as defined in the last sentence of section 13(a)(2). Privately owned and operated restaurants conducted as separate and independent business establishments in industrial plants, office buildings, government installations, hospitals, or colleges, such as were involved in McComb v. Factory Stores, 81 F. Supp. 403 (N.D. Ohio) continue to be exempt under section 13(a)(2) where the tests of the exemption are met (S. Rept. 145, 87th Cong., first session, p. 28; H. Rept. 75, 87th Cong., first session, p. 10). However, they would not be met if the food service is carried on as an activity of the larger, nonretail establishment in which the facility is located and there is no independent, separate and distinct place of business offering the restaurant service to individual customers from the general public, who purchase the meals selected by them directly from the establishment which serves them. An establishment serving meals to individuals, pursuant to a contract with an organization or person paying for such meals because the latter has assumed a contractual obligation to furnish them to the individuals concerned, is selling to such organization or firm, and the sales are for resale within the meaning of section 13(a)(2). See also § 779.387.

§ 779.387 "Restaurant" exemption under section 13(b)(8).

(a) As amended in 1966, the Act, in section 13(b)(8), exempts from its overtime pay provisions "any employee employed by an establishment which is a * * * restaurant". The term "restaurant" as used in section 13(b)(8) of the Act means an establishment which is primarily engaged in selling and serving to purchasers at retail prepared food and beverages for immediate consumption on the premises. This includes such establishments commonly known as lunch counters, refreshment stands, cafes, cafeterias, coffee shops, diners, dining rooms, lunch rooms, or tea rooms. The term "restaurant" does not include drinking establishments, such as bars or cocktail lounges, whose sales of alcoholic beverages exceed the receipts from sales of prepared foods and nonalcoholic beverages. Certain food or beverage service employees of establishments such as bars and cocktail lounges, however, may be exempt under section 13(b)(18).

(b) Not all places where food is served for immediate consumption on the premises are "restaurant" establishments within the meaning of section 13(b)(8). Such service is sometimes provided as an incidental activity of an establishment of another kind, rather than by an establishment possessing the physical and functional characteristics of a separate place of business engaged in restaurant operations. In such event, the establishment providing the meal service is not an establishment "which is" a restaurant as section 13(b)(8) requires for exemption. Further, not every place which serves meals, even if it should qualify as a separate food service establishment, possesses the characteristics of a "restaurant." The meals served by restaurants are characteristically priced, offered, ordered, and served for consumption by and paid for by the customer on an individual meal basis. A restaurant functions principally, and not merely incidentally, to meet the immediate needs and desires of the individual customer for refreshment at the particular time that he visits the establishment for the purpose. A separate transaction to accommodate these needs and desires takes place on the occasion of each such visit. A "restaurant", therefore, is to be distinguished from an establishment offering meal service on a boarding or term basis or providing such service only as an incident to the operation of an enterprise of another kind and primarily to meet institutional needs for continuing meal service to persons whose continued presence is required for such operation. Accordingly, a boarding house is not a "restaurant" within the meaning of section 13(b)(8), nor are the dining facilities of a boarding school, college or university which serve its students and faculty, nor are the luncheon facilities provided for private and public day school students, nor are other institutional food service facilities providing long-term meal service to stable groups of individuals as an incident to institutional operations in a manner wholly dissimilar to the typical transactions between a restaurant and its customers.

§ 779.388 Exemption provided for food or beverage service employees.

(a) A special exemption is provided in section 13(b)(18) of the Act for certain food or beverage service employees of retail or service establishments. This section excludes from the overtime pay provisions in section 7 of the Act, "any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs." This is an employee exemption, intended to apply to employees engaged in the named activities for such establishments as "drug stores, department stores, bowling alleys, and the like." (S. Rept. No. 1487, 89th Cong., second session, p. 32.)

(b) The 13(b)(18) exemption will apply only if the following two tests are met:

(1) The employee must be an employee of a retail or service establishment (as defined in section 13(a)(2) of the Act); and

(2) The employee must be employed primarily in connection with the specified food or beverage service activities. If both of the above criteria are met, the employee is exempt from the overtime pay provisions of the Act.

(c) The establishment by which the employee is employed must be a "retail or service establishment." This term is defined in section 13(a)(2) of the Act and the definition is quoted in § 779.24; the application of the definition is considered at length earlier in this subpart. In accordance with this definition, the establishment will be a "retail or service establishment" for purposes of section 13(b)(18) if 75 percent or more of the establishment's annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

(d) If the establishment comes within the above definition it is immaterial that the establishment is in an enterprise or part of an enterprise described in section 3(s). Thus section 13(b)(18) will be applicable regardless of the annual dollar volume of sales of the establishment or of the enterprise of which it is a part. It should also be noted that it is not required that the establishment make more than 50 percent of its annual dollar volume of sales within the State in which it is located. The establishment by which the employee is employed, provided it qualifies as a "retail or service establishment," may be a drug store, department store, cocktail lounge, night club, and the like.

(e) This exemption does not apply to employees of the ordinary bakery or grocery store who handle, prepare or sell food or beverages for human consumption since such food or beverages are not prepared or offered for consumption "on the premises, or by such services as catering, banquet, box lunch, or curb or counter service * * *"

(f) If the establishment by which the employee is employed is a "retail or service establishment," as explained above, he will be exempt under section 13(b)(18) provided he is employed primarily in connection with the preparation or offering of food or beverages for human consumption either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs. An employee employed in the actual preparation or serving of the food or beverages or in activities closely related and directly essential to the preparation and serving will be regarded as engaged in the described activities. The exemption, therefore, extends not only to employees actually cooking, packaging or serving food or beverages, but also to employees such as cashiers, hostesses, dishwashers, busboys, and cleanup men. Also, where the food or beverages are served away from the establishment, the exemption extends to employees of the retail or service establishment who make ready the serving place, serve the food, clean up, and transport the equipment, food and beverages to and from the serving place.

(g) For the exemption to apply, the employee must be engaged "primarily" in performing the described activities. A sales clerk in a drug store, department store or other establishment, who as an incident to his other duties, occasionally prepares or otherwise handles food or beverages for human consumption on the premises will not come within the scope of this exemption. The exemption is intended for employees who devote all or most of their time to the described food or beverage service activities. For administrative purposes this exemption will not be considered defeated for an employee in any workweek in which he devotes more than one-half of his time worked to such activities.

Subpart E—Provisions Relating to Certain Employees of Retail or Service Establishments

General Principles

§ 779.400 Purpose of subpart.

The 1966 amendments to the Act changed certain existing provisions and added other provisions pertaining to exemptions from the requirements of sections 6 and 7 with respect to certain employees. This subpart deals with those exemptions provisions of interest to retail or service enterprises or establishments.

Executive, Administrative, and Professional Employees and Outside Salesmen

§ 779.401 Statutory provision.

Section 13(a)(1) of the Act provides that the provisions of sections 6 and 7 shall not apply with respect to:

> Any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities).

§ 779.402 "Executive" and "administrative" employees defined.

The terms "executive" and "administrative" as used in section 13(a)(1) of the Act are defined and delimited in Subpart A of Part 541 of this chapter and explained in Subpart B of that part. These regulations are applicable under the amended section 13(a)(1) in determining which employees are bona fide executive or administrative employees. The clause that is enclosed in parentheses in section 13(a)(1) and which reads "including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools" was added by the 1966 amendments to the Act. This clause will not have any affect in the application of the regulations to retail or service establishments. The Act and the regulations point out the fact that an executive or administrative employee of a retail or service establishment may devote up to 40 percent of his hours worked in a workweek to activities which are not directly and closely related to the performance of executive or administrative activities and still qualify as a bona fide executive or administrative employee. However, in other types of establishments such a tolerance is limited to 20 percent, except where special provisions are made in Part 541 of this chapter.

§ 779.403 Administrative and executive employees in covered enterprises employed in other than retail or service establishments.

The up-to-40 percent tolerance for nonexecutive or nonadministrative duties discussed in the preceding section, does not apply to executive or administrative employees of an establishment other than a "retail or service establishment." For example, an executive or administrative employee of a central office or a central warehouse of a chain store system is not an employee of a "retail or service establishment," and therefore must still devote not more than 20 percent of his hours worked in a workweek to activities which are not directly and closely related to the performance of executive or administrative duties in order to qualify as a bona fide executive or administrative employee under section 13(a)(1), except where special provisions are made in the regulations issued under that section of the Act.

§ 779.404 Other section 13(a)(1) employees employed in covered enterprises.

The "professional" employee or the "outside salesman" employed by a retail or service establishment in a covered enterprise, in order to qualify as a bona fide "professional employee" or as an "outside salesman," must meet all the requirements set forth in the regulations issued and found in Part 541, Subpart A of this chapter, and further explained in Subpart B thereof. The up-to-40 percent tolerance discussed in § 779.403 for "administrative and executive employees" of a retail or service establishment does not apply to the "professional employee" or the "outside salesman."

Students, Learners, and Handicapped Workers

§ 779.405 Statutory provisions.

Section 13(a)(7) of the Act provides that the provisions of sections 6 and 7 shall not apply to:

> Any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 14.

Section 14 of the Act provides, in pertinent part, as follows:

> Learners, Apprentices, Students, and Handicapped Workers
>
> Sec. 14. (a) The Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.
>
> (b) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time basis in retail or service establishments (not to exceed twenty hours in any workweek) or on a part-time or a full-time basis in such establishments during school vacations, under special certificates issued pursuant to regulations of the Secretary, at a wage rate not less than 85 per centum of the minimum wage applicable under section 6, except that the proportion of student hours of employment to total hours of employment of all employees in any establishment may not exceed (1) such proportion for the corresponding month of the 12-month period preceding May 1, 1961, (2) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered by this Act for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966, such proportion for the corresponding month of the 12-month period immediately prior to such date, or (3) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the 12-month period preceding May 1, 1961, in (A) similar establishments of the same

employer in the same general metropolitan area in which the new establishment is located, (B) similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or (C) other establishments of the same general character operating in the community or the nearest comparable community. Before the Secretary may issue a certificate under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection.

* * * * *

(d)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals * * * whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which are lower than the minimum wage applicable under section 6 of this Act but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(2) The Secretary, pursuant to such regulations as he shall prescribe and upon certification of the State agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates for the employment of—

(A) handicapped workers engaged in work which is incidental to training or evaluation programs, and

(B) multihandicapped individuals and other individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment,

at wages which are less than those required by this subsection and which are related to the worker's productivity.

(3)(A) The Secretary may by regulation or order provide for the employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimums applicable under section 6 of this Act or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.

(B) For purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

§ 779.406 "Student-learners".

(a) *Applicable regulations.* In accordance with section 14 of the Act regulations have been issued to provide for employment under special certificates of student-learners at wages lower than the minimum wage applicable under section 6 of the Act. These regulations are set forth in Part 520 of this chapter and govern the issuance of special certificates for student-learners in covered employments generally as well as such employments in retail or service establishments.

(b) *Definitions.* The regulations in section 520.2 of this chapter define "student-learners" and "bona fide vocational training program" as follows:

(1) A "student-learner" is defined as "a student who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a bona fide vocational training program."

(2) A "bona fide vocational training program" is defined as "one authorized and approved by a State board of vocational education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular part of the student-learner's course by an accredited school, college or university".

§ 779.407 Learners other than "student-learners".

Regulations have been issued in accordance with the authority in section 14 of the Act to provide for employment under special certificates of learners at wages lower than the minimum wage applicable under section 6 of the Act. Part 522 of this chapter contains the general regulations for learners and those for learners in particular industries. General learner regulations are set forth in §§ 522.1 to 522.11 of this chapter.

§ 779.408 "Full-time students".

The 1961 Amendments added to section 14 of the Act, the authority to issue special certificates for the employment of "full-time students", under certain specified conditions, at wages lower than the minimum wage applicable under section 6. The student, to qualify for a special certificate must attend school full time and his employment must be outside of his school hours and his employment must be in a retail or service establishment. In addition, the student's employment must not be of the type ordinarily given to a full-time employee. "The purpose of this provision", as made clear in the legislative history, "is to provide employment opportunities for students who desire to work part time outside of their school hours without the displacement of adult workers" (S. Rept. 145, 87th Cong., first session, p. 29). The application of this provision was amplified by the 1966 amendments to provide for the employment of full-time students regardless of age but in compliance with applicable child labor laws in retail or service establishments and in agriculture (not to exceed 20 hours in any workweek) or on a part-time or a full-time basis during school vacations at a wage rate not less than 85 percent of the applicable minimum wage (H. Rept. 1366, 89th Cong., second session, pp. 34 and 35). Regulations authorizing the issuance of certificates under this provision of the Act are published in Part 519 of this chapter.

§ 779.409 Handicapped workers.

Regulations have been issued under the authority in section 14 of the Act to provide for employment under special certificate of handicapped workers at wages lower than the minimum wage applicable under section 6 of the Act. These regulations are set forth in Part 524 of this chapter. In these regulations handicapped workers are defined as individuals whose earning capacity is impaired by age or physical or mental deficiency or injury for the work they are to perform.

Employees Compensated Principally by Commissions

§ 779.410 Statutory provision.

Section 7 of the Act provides, in subsection (i):

(1) No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than 1 month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

There are briefly set forth in §§ 779.411 to 779.421 some guiding principles for determining whether an employee's employment and compensation meet the conditions set forth in section 7(i).

§ 779.411 Employee of a "retail or service establishment".

In order for an employee to come within the exemption from the overtime pay requirement provided by section 7(i) for certain employees receiving commissions, the employee must be employed by a retail or service establishment. The term "retail or service establishment" is defined in section 13(a)(2) of the Act. The definition is set forth in § 779.24; its application is considered at length in Subpart D of this part. As used in section 7(i), as in other provisions of the Act, the term "retail or service establishment" means an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

§ 779.412 Compensation requirements for overtime pay exemption under section 7(i).

An employee of a "retail or service establishment" who is paid on a commission basis or whose pay includes compensation representing commissions need not be paid the premium compensation prescribed by section 7(a) for overtime hours worked in a workweek, provided the following conditions are met:

(a) The "regular rate" of pay of such employee must be more than one and one-half times the minimum hourly rate applicable to him under section 6, and

(b) More than half his compensation for a "representative period" (not less than one month) must represent commissions on goods or services.

§ 779.413 Methods of compensation of retail store employees.

(a) Retail or service establishment employees are generally compensated (apart from any extra payments for overtime or other additional payments) by one of the following methods:

(1) Straight salary or hourly rate: Under this method of compensation the employee receives a stipulated sum paid weekly, biweekly, semimonthly, or monthly or a fixed amount for each hour of work.

(2) Salary plus commission: Under this method of compensation the employee receives a commission on all sales in addition to a base salary (see subparagraph (1) of this paragraph).

(3) Quota bonus: This method of compensation is similar to subparagraph (2) of this paragraph except that the commission payment is paid on sales over and above a predetermined sales quota.

(4) Straight commission without advances: Under this method of compensation the employee is paid a flat percentage on each dollar of sales he makes.

(5) Straight commission with "advances," "guarantees," or "draws." This method of compensation is similar to subparagraph (4) of this paragraph except that the employee is paid a fixed weekly, biweekly, semimonthly, or monthly "advance," "guarantee," or "draw." At periodic intervals a settlement is made at which time the payments already made are supplemented by any additional amount by which his commission earnings exceed the amounts previously paid.

(b) The above listing in paragraph (a) of this section which reflects the typical methods of compensation is not, of course, exhaustive of the pay practices which may exist in retail or service establishments. Although typically in retail or service establishments commission payments are keyed to sales, the requirement of the exemption is that more than half the employee's compensation represent commissions "on goods or services", which would include all types of commissions customarily based on the goods or services which the establishment sells, and not exclusively those measured by "sales" of these goods or services.

§ 779.414 Types of employment in which this overtime pay exemption may apply.

Section 7(i) was enacted to relieve an employer from the obligation of paying overtime compensation to certain employees of a retail or service establishment paid wholly or in greater part on the basis of commissions. These employees are generally employed in so-called "big ticket" departments and those establishments or parts of establishments where commission methods of payment traditionally have been used, typically those dealing in furniture, bedding and home furnishings, floor covering, draperies, major appliances, musical instruments, radios and television, men's clothing, women's ready to wear, shoes, corsets, home insulation, and various home custom orders. There may be other segments in retailing where the proportionate amount of commission payments would be great enough for employees employed in such segments to come within the exemption. Each such situation will be examined, where exemption is claimed, to make certain that the employees treated as exempt from overtime compensation under section 7(i) are properly within the statutory exclusion.

§ 779.415 Computing employee's compensation for the representative period.

(a) In determining for purposes of section 7(i) whether more than half of an employee's compensation "represents commissions on goods or services" it is necessary first to total all compensation paid to or on behalf of the employee as remuneration for his employment during the period. All such compensation in whatever form or by whatever method paid should be included, whether calculated on a time, piece, incentive or other basis, and amounts representing any board, lodging or other facilities furnished should be included in addition to cash payments, to the extent required by section 3(m) of the Act and Part 531 of this chapter. Payments excludable from the employee's "regular rate" under section 7(e) may be excluded from this computation if, but only if, they are payments of a kind not made as compensation for his employment during the period. (See Part 778 of this chapter.)

(b) In computing the employee's total compensation for the representative period it will in many instances become clear whether more than half of it represents commissions. Where this is not clear, it will be necessary to identify and total all portions of the compensation which represent commissions on the goods or services that the retail or service establishment sells. In determining what compensation "represents commissions on goods or services" it is clear that any portion of the compensation paid, as a weekly, biweekly, semimonthly, monthly, or other periodic salary, or as an hourly or daily rate of pay, does not "represent commissions" paid to the employee. On the other hand, it is equally clear that an employee paid entirely by commissions on the goods or services which the retail or service establishment sells will, in any representative period which may be chosen, satisfy the requirement that more than half of his compensation represents commissions. The same will be true of an employee receiving both salary and commission payments whose commissions always exceed the salary. If, on the other hand, the commissions paid to an employee receiving a salary are always a minor part of his total compensation it is clear that he will not qualify for the exemption provided by section 7(i).

§ 779.416 What compensation "represents commissions".

(a) Employment arrangements which provide for a commission on goods or services to be paid to an employee of a retail or service establishment may also provide, as indicated in § 779.413, for the payment to the employee at a regular pay period of a fixed sum of money, which may bear a more or less fixed relationship to the commission earnings which could be expected, on the basis of experience, for an average period of the same length. Such periodic payments, which are variously described in retail or service establishments as "advances," "draws," or "guarantees," are keyed to a time base and are usually paid at weekly or other fixed intervals which may in some instances be different from and more frequent than, the intervals for payment of any earnings computed exclusively on a commission basis. They are normally smaller in amount than the commission earnings expected for such a period and if they prove to be greater, a deduction of the excess amount from commission earnings for a subsequent period, if otherwise lawful, may or may not be customary under the employment arrangement. A determination of whether or to what extent such periodic payments can be considered to represent commissions may be required in those situations where the employment arrangement is that the employee will be paid the stipulated sum, or the commission earnings allocable to the same period, whichever is the greater amount. The stipulated sum can never represent commissions, of course, if it is actually paid as a salary. If, however, it appears from all the facts and circumstances of the employment that the stipulated sum is not so paid and that it actually functions as an integral part of a true commission basis of payment, then such compensation may qualify as compensation which "represents commissions on goods or services" within the meaning of clause (2) of the section 7(i) exemption.

(b) The express statutory language of section 7(i), as amended in 1966, provides that "In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee" which may be paid to the employee. Thus an employee who is paid a guarantee or draw against commissions computed in accordance with a bona fide commission payment plan or formula under which the computed commissions vary in accordance with the employee's performance on the job will qualify for exemption provided the conditions of 7(i)(1) are met as explained in § 779.419. Under a bona file commission plan all of the computed commissions will be counted as compensation representing commissions even though the amount of commissions may not equal or exceed the guarantee or draw in some workweeks. The exemption will also apply in the case of an employee who is paid a fixed salary plus an additional amount of earned commissions if the amount of commission payments exceeds the total amount of salary payments for the representative period.

(c) A commission rate is not bona fide if the formula for computing the commissions is such that the employee, in fact, always or almost always earns the same fixed amount of compensation for each workweek (as would be the case where the computed commissions seldom or never equal or exceed the amount of the draw or guarantee). Another example of a commission plan which would not be considered as bona fide is one in which the employee receives a regular payment constituting nearly his entire earnings which is expressed in terms of a percentage of the sales which the establishment or department can always be expected to make with only a slight addition to his wages based upon a greatly reduced percentage applied to the sales above the expected quota.

§ 779.417 The "representative period" for testing employee's compensation.

(a) Whether compensation representing commissions constitutes most of an employee's pay, so as to satisfy the exemption condition contained in clause (2) of section 7(i), must be determined by testing the employee's compensation for a "representative period" of not less than 1 month. The Act does not define a representative period, but plainly contemplates a period which can reasonably be accepted by the employer, the employee, and disinterested persons as being truly representative of the compensation aspects of the employee's employment on which this exemption test depends. A representative period within the meaning of this exemption may be described generally as a period which typifies the total characteristics of an employee's earning pattern in his current employment situation, with respect to the fluctuations of the proportion of his commission earnings to his total compensation.

(b) To this end the period must be as recent a period, of sufficient length (see (c) of this section) to fully and fairly reflect all such factors, as can practicably be used. Thus, as a general rule, if a month is long enough to reflect the necessary factors, the most recent month for which necessary computations can be made prior to the payday for the first workweek in the current month should be chosen. Similarly, if it is necessary to use a period as long as a calendar or fiscal quarter year to fully represent such factors, the quarterly period used should ordinarily be the one ending immediately prior to the quarter in which the current workweek falls. If a period longer than a quarter year is required in order to include all the factors necessary to make it fully and fairly representative of the current period of employment for purposes of section 7(i), the end of such period should likewise be at least as recent as the end of the quarter year immediately preceding the quarter in which the current workweek falls. Thus, in the case of a representative period of 6 months or of 1 year, recomputation each quarter would be required so as to include in it the most recent two quarter-years or four quarter-years, as the case may be. The quarterly recomputation would tend to insure that the period used reflects any gradual changes in the characteristics of the employment which could be important in determining the ratio between compensation representing commissions and other compensation in the current employment situation of the employee.

(c) The representative period for determining whether more than half of an employee's compensation represents commissions cannot, under the express terms of section 7(i), be less than 1 month. The period chosen should be long enough to stabilize the measure of the balance between the portions of the employee's compensation which respectively represent commissions and other earnings, against purely seasonal or plainly temporary changes. Although the Act sets no upper limit on the length of the period, the statutory intent would not appear to be served by any recognition of a period in excess of 1 year as representative for purposes of this exemption. There would seem to be no employment situation in a retail or service establishment in which a period longer than a year would be needed to represent the seasonal and other fluctuations in commission compensation.

(d) Accordingly, for each employee whose exemption is to be tested in any workweek under clause (2) of section 7(i), an appropriate representative period or a formula for establishing such a period must be chosen and must be designated and substantiated in the employer's records (see § 516.16 of this chapter). When the facts change so that the designated period or the period established by the designated formula is no longer representative, a new representative period or formula therefor must be adopted which is appropriate and sufficient for the purpose, and designated and substantiated in the employer's records. Although the period selected and designated must be one which is representative with respect to the particular employee for whom exemption is sought, and the appropriateness of the representative period for that employee will always depend on his individual earning pattern, there may be situations in which the factors affecting the proportionate relationship between total compensation and compensation representing commissions will be substantially identical for a group or groups of employees in a particular occupation or department of a retail or service establishment or in the establishment as a whole. Where this can be demonstrated to be a fact, and is substantiated by pertinent information in the employer's records, the same representative period or formula for establishing such a period may properly be used for each of the similarly situated employees in the group.

§ 779.418 Grace period for computing portion of compensation representing commissions.

Where it is not practicably possible for the employer to compute the commission earnings of the employee for all workweeks ending in a prior representative period in time to determine the overtime pay obligations, if any, for the workweek or workweeks immediately following, 1 month of grace may be used by the retail or service establishment. This month of grace will not change the length of the current period in which the prior period is used as representative. It will merely allow an interval of 1 month between the end of the prior period and the beginning of the current period in order to permit necessary computations for the prior period to be made. For example, assume that the representative period used is the quarter-year immediately preceding the current quarter, and commissions for the prior period cannot be computed in time to determine the overtime pay obligations for the workweeks included in the first pay period in the current quarter. By applying a month of grace, the next earlier quarterly period may be used during the first month of the current quarter; and the quarter-year immediately preceding the current quarter will then be used for all workweeks ending in a quarter-year period which begins 1 month after the commencement of the current quarter. Thus, a January 1–March 31 representative period may be used for purposes of section 7(i) in a quarterly period beginning May 1 and ending July 31, allowing the month of April for necessary commission computations for the representative period. Once this method of computation is adopted it must be used for each successive period in like manner. The prior period used as representative must, of course, as in other cases, meet all the requirements of a representative period as previously explained.

§ 779.419 Dependence of the section 7(i) overtime pay exemption upon the level of the employee's "regular rate" of pay.

(a) If more than half of the compensation of an employee of retail or service establishment for a representative period as previously explained represents commissions on goods or services, one additional condition must be met in order for the employee to be exempt under section 7(i) from the overtime pay requirement of section 7(a) of the Act in a workweek when his hours of work exceed the maximum number specified in section (a). This additional condition is that his "regular rate" of pay for such workweek must be more than one and one-half times the minimum hourly rate applicable to him from the minimum wage provisions of section 6 of the Act. If it is not more than one and one-half times such minimum rate, there is no overtime pay exemption for the employee in that particular workweek.

(b) The meaning of the "regular rate" of pay under the Act is well established. As explained by the Supreme Court of the United States, it is "the hourly rate actually paid the employee for the normal, nonovertime workweek for which he is employed" and "by its very nature must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments." (Walling v. Youngerman-Reynolds Hardwood Co., 325 U.S. 419.) It is a rate per hour, computed for the particular workweek by a

mathematical computation in which hours worked are divided into straight-time earnings for such hours to obtain the statutory regular rate (Overnight Motor Co. v. Missel, 316 U.S. 572). By definition (Act, section 7(e)), the "regular rate" as used in section 7 of the Act includes "all remuneration paid to, or on behalf of, the employee" except payments expressly excluded by the seven numbered clauses of section 7(e). The computation of the regular rate for purposes of the Act is explained in Part 778 of this chapter. The "regular rate" is not synonymous with the "basic rate" which may be established by agreement or understanding of the parties to the employment agreement under the provisions of section 7(g)(3) of the Act; that section, like section 7(i), merely provides an exemption from the general requirement of overtime compensation based on the regular rate contained in section 7(a), if certain prescribed conditions are met (in section 7(g)(3) these include payment of overtime compensation on a basic rate established and authorized in accordance with its terms). The requirement of section 7(i) with respect to the "regular rate" of pay of an employee who may come within the exemption which it provides is a simple one: "the regular rate of pay of such employee," when employed "for a workweek in excess of the applicable workweek specified" in section 7(a), must be "in excess of one and one-half times the minimum hourly rate applicable to him under section 6." The employee's "regular rate" of pay must be computed, in accordance with the principles discussed above, on the basis of his hours of work in that particular workweek and the employee's compensation attributable to such hours. The hourly rate thus obtained must be compared with the applicable minimum rate of pay of the particular employee under the provisions of section 6 of the Act. If the latter rate is $1.60 an hour, for example, then the employee's regular rate must be *more* than $2.40 an hour if the exemption is to apply.

§ 779.420 Recordkeeping requirements.

The records which must be kept with respect to employees for whom the overtime pay exemption under section 7(i) is taken are specified in § 516.16 of this chapter.

§ 779.421 Basic rate for computing overtime compensation of nonexempt employees receiving commissions.

The overtime compensation due employees of a retail or service establishment who do not meet the exemption requirements of section 7(i) may be computed under the provisions of section 7(g)(3) of the Act if the employer and employee agree to do so under the conditions there provided. Section 7(g)(3) permits the use of a basic rate established, pursuant to agreement or understanding in advance of the work, in lieu of the regular rate for the purpose of computing overtime compensation. The use of such a basic rate for employees of a retail or service establishment compensated wholly or partly by commissions is authorized under the conditions set forth in Part 548 of this chapter.

Subpart F—Other Provisions Which May Affect Retail Enterprises

General

§ 779.500 Purpose of subpart.

In Subpart A of this part, reference was made to a number of regulations which discuss provisions of the Act, such as general coverage, overtime compensation, joint employment, hours worked, and methods of payment of wages, which are applicable to others as well as to retailers and their employees. (See § 779.6.) In addition to those provisions, the Act contains other provisions of interest to retailers and their employees. It is the purpose of this subpart to focus attention on several of the more significant provisions in these categories.

Equal Pay Provisions

§ 779.501 Statutory provisions.

Section 6(d) of the Act provides:

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Official interpretations of the Department of Labor with respect to the provisions of section 6(d) are found in Part 800 of this chapter.

Child Labor Provisions

§ 779.502 Statutory provisions; regulations in Part 1500 of this title.

(a) The Act's prohibitions in relation to employment of child labor, which may have application to retailers, are found in section 12(a) and section 12(c). Section 12(a) reads as follows:

No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

Section 12(c) provides:

No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

(b) "Oppressive child labor" is defined by the Act, for purposes of the foregoing provisions, in the language set forth in § 779.505.

(c) Sections 1500.1–1500.129 in Chapter XIII of this title contain applicable regulations and a detailed discussion of the child labor provisions of the Act. Although those sections offer guidance for all including retailers, there are set forth in §§ 779.503 through 779.508 pertinent provisions and a brief discussion of the standards which are of particular interest to those in the retail field.

§ 779.503 The retailer and section 12(a).

Section 12(a) prohibits certain shipments or deliveries for shipment by "producers," "manufacturers" or "dealers." These terms having appeared in this section prior to the 1961 amendments are defined and described in § 1500.105 of this title, and said definitions remain unchanged. It should be noted that the term "manufacturer" as used in section 12(a) includes retailers who, in addition to retail selling, engage in such manufacturing activities as the making of slipcovers or curtains, the baking of bread, the making of candy, or the making of window frames. Further, the term "dealers" refers to anyone who deals in goods including person engaged in buying, selling, trading, distributing, delivering, etc. "Dealers," therefore, as used in section 12(a) include retailers. Therefore, where a retailer's business unit is covered under the Act and he is a producer, manufacturer or dealer within the meaning of this section, the retailer must comply with the requirements of section 12(a). If a retailer's business unit which is covered under the Act is exempt as a retail or service establishment under section 13 of the Act from the monetary requirements of the Act, the requirements of the child labor provisions

must still be met. Thus, retail or service establishments, in covered enterprises, doing less than $250,000 annually, must comply with the child labor requirements even if they are exempt from minimum wage and overtime provisions under section 13(a)(2) of the Act.

§ 779.504 The retailer and section 12(c).

Section 12(c) was amended in 1961 to prohibit the employment of oppressive child labor in any enterprise engaged in commerce or in the production of goods for commerce. Thus, employers in every enterprise which is covered under the Act must comply with section 12(c) of the child labor provisions of the Act. As stated in § 779.503, compliance with this provision is necessary even though the employers in a particular establishment or establishments of a covered enterprise are exempt from the requirement of compensating employees in accordance with sections 6 and 7 of the Act.

§ 779.505 "Oppressive child labor" defined.

Section 3(l) of the Act defines oppressive child labor as follows:

"Oppressive child labor" means a condition of employment under which (1) any employee under the age of 16 years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of 16 years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of 16 and 18 years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of 16 and 18 years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or deterimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of 14 and 16 years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

§ 779.506 Sixteen-year minimum.

The Act sets a 16-year minimum for employment in manufacturing or mining occupations. Furthermore, this age minimum is applicable to employment in all other occupations unless otherwise provided by regulation or order issued by the Secretary.

§ 779.507 Fourteen-year minimum.

(a) *Prohibited occupations.* With respect to employment in occupations other than manufacturing and mining, the Secretary is authorized to issue regulations or orders lowering the age minimum to 14 years where he finds that such employment is confined to periods which will not interfere with the minors' schooling and to conditions which will not interfere with their health and well-being. Pursuant to this authority, the Secretary permits the employment of 14- and 15-year-old children in a limited number of occupations where the work is performed outside school hours and is confined to other specified limits. Under the provisions of Child Labor Regulations, Subpart C (§§ 1500.31–1500.38 of this title), employment of minors in this age group is not permitted in the following occupations:

(1) Manufacturing, mining, or processing occupations including occupations requiring the performance of any duties in a workroom or workplace where goods are manufactured, mined, or otherwise processed;

(2) Occupations involving the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(3) The operation of motor vehicles or service as helpers on such vehicles;

(4) Public messenger service;

(5) Occupations declared to be particularly hazardous or detrimental to health or well-being by the Secretary;

(6) Occupations in connection with (i) transportation of persons or property by rail, highway, air, water, pipeline, or other means; (ii) warehousing and storage; (iii) communications and public utilities; and (iv) construction (including demolition and repair). Office and sales work performed in connection with the occupations specified in this subparagraph is permitted if such work is not performed on trains or any other media of transportation or at the actual site of construction operations.

(b) *Permissible occupations; conditions.* Employment of 14- and 15-year-olds in all occupations other than those in paragraph (a) of this section is permitted by the regulation under certain conditions specified in the regulation. The permissible occupations for minors between 14 and 16 years of age in retail, food service, and gasoline service establishments are listed in § 1500.34. The periods and conditions of employment for such minors are set out in § 1500.35.

§ 779.508 Eighteen-year minimum.

To protect young workers from hazardous employment, the Act provides for a minimum age of 18 years in occupations found and declared by the Secretary to be particularly hazardous or detrimental to health or well-being of minors 16 and 17 years of age. These occupations may be found in §§ 1500.51–1500.68 of this title. Of particular interest to retailers are §§ 1500.52, 1500.58, 1500.62, and 1500.63 of this title pertaining to the occupations of motor-vehicle driver and outside helper, and occupations involving the operation of power-driven hoisting apparatus, bakery machines, and paper products machines.

Driver or Driver's Helper Making Local Deliveries

§ 779.509 Statutory provision.

Section 13(b)(11) exempts from the provisions of section 7 of the Act:

Any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a).

This is an exemption from the overtime pay requirements only.

§ 779.510 Conditions that must be met for section 13(b)(11) exemption.

In order that an employee be exempt from the overtime provisions of the Act under section 13(b)(11) he must be employed as a driver or driver's helper making local deliveries, and, he must be compensated for such employment on a trip rate basis or other delivery payment plan, and such plan must be found by the Secretary to have the general purpose and effect of reducing the hours worked by the driver or driver's helper to, or below, the maximum workweek applicable to him under section 7(a) of the Act. If all the preceding conditions are not met the exemption is inapplicable.

§ 779.511 "Finding by Secretary".

As stated in § 779.510, before the section 13(b)(11) exemption may be claimed, the Secretary must find that the trip rate basis of compensation, or other delivery payment plan used to compensate a driver or a driver's helper making local deliveries, has the general purpose and effect of reducing the hours worked by these employees to, or below, the maximum workweek applicable to them under section 7(a) of the Act. The conditions under which such findings may be made, amended, or revoked, and the procedure for obtaining such a finding are set forth in the regulations in Part 551 of this chapter.

Records to be Kept by Employers

§ 779.512 The recordkeeping regulations.

Every employer who is subject to any of the provisions of the Act is required to maintain certain records. The recordkeeping requirements are set forth in regulations which have been published in Subparts A and B of Part 516 of this chapter. Subpart A contains the requirements applicable to all employers employing covered employees, including the general requirements relating to the posting of notices, the preservation and location of records and similar general provisions. Subpart A also contains the requirements relating to the records which must be kept for exempt executive, administrative, and professional employees and outside salesmen. Subpart B deals with information and data which must be kept with respect to employees who are subject to other exemptions and provisions of the Act.

§ 779.513 Order and form of records.

No particular order or form of records is prescribed by the regulations. However, the records which the employer keeps must contain the information and data required by the specific sections of the regulations which are applicable. In addition, where the employer claims an exemption from the minimum wage or overtime or other requirements of the Act, he should also maintain those records which serve to support his claim for exemption, such as records of sales, purchases, and receipts.

§ 779.514 Period for preserving records.

Basic records, such as payroll records, certificates issued or required under the Act, and employment agreements and other basic records must be preserved for at least 3 years. Supplementary records such as time and earnings cards or sheets, wage rate tables, work time schedules, or order, shipping and billing records, and similar records need be preserved for only 2 years.

§ 779.515 Regulations should be consulted.

This discussion in subpart F of this part is intended only to indicate the general requirements of the recordkeeping regulations. Each employer subject to any provision of the Act should consult the regulations to determine what records he must maintain and the period for which they must be preserved.

Signed at Washington, D.C., this 2d day of April 1970.

ROBERT D. MORAN,
Administrator,
Wage and Hour Division.

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