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 section 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. 362); 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 the 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.

§ 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 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 through 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. Kanovsky, 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 through 779.341).