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(c) When an agency is assessing or explaining whether it believes a guidance document is significant, it should, at a minimum, provide the same level of analysis that would be required for a major determination under the Congressional Review Act.<sup>1</sup>

(d) The following will apply to significant guidance documents:

(1) A period of public notice and comment of at least 30 days before the issuance of a final guidance document, and a public response from the Agencies to major concerns raised in comments. If the Agencies, for good cause, find that the notice and public comment are impracticable, unnecessary, or contrary to the public interest, then no period of public comment will be provided, with notification and consultation with OIRA;

(2) Approval by the respective Agency Director;

(3) Review by OIRA under Executive Order 12866 before issuance;

(4) Compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 13609 (Promoting International Regulatory Cooperation), E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs), and E.O. 13777 (Enforcing the Regulatory Reform Agenda).

#### **§ 813.9 Petitions for withdrawal or modification of guidance.**

Any person may petition CSOSA or PSA to withdraw or modify a particular guidance document. A person may make a request by accessing the respective agency guidance web portal or by writing a letter to the respective Agencies. The Agencies' portals allow an individual to provide his or her contact information and guidance-related requests. The Agencies will respond in a timely manner, but no later than 90 days after receipt of the request.

Dated: April 24, 2020.

**Richard S. Tischner,**

*Director, Court Services and Offender Supervision Agency for the District of Columbia.*

[FR Doc. 2020-09152 Filed 5-18-20; 8:45 am]

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## **DEPARTMENT OF LABOR**

### **Wage and Hour Division**

#### **29 CFR Part 779**

**RIN 1235-AA32**

#### **Partial Lists of Establishments that Lack or May Have a "Retail Concept" Under the Fair Labor Standards Act**

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Final rule; withdrawal.

**SUMMARY:** Section 7(i) of the Fair Labor Standards Act (FLSA or Act) provides an exemption from the Act's overtime compensation requirement for certain commissioned employees employed by a retail or service establishment. In this final rule, the Department of Labor (Department) withdraws the "partial list of establishments" that it previously viewed as having "no retail concept" and categorically unable to qualify as retail or service establishments eligible to claim the section 7(i) exemption; and the "partial list of establishments" that, in its view, "may be recognized as retail" for purposes of the exemption. Removing these lists promotes consistent treatment when evaluating section 7(i) exemption claims by treating all establishments equally under the same standards and permits the reevaluation of an industry's retail nature as developments progress over time. This withdrawal will also reduce confusion, as the list of establishments that "may be recognized as retail" did not necessarily affect the analysis as to whether any particular establishment was, in fact, retail.

**DATES:** This rule is effective May 19, 2020.

#### **FOR FURTHER INFORMATION CONTACT:**

Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693-0406 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Because part 779 is an interpretive rule, the provision in the Administrative Procedure Act (APA) requiring publication of a notice of proposed

rulemaking does not apply. See 5 U.S.C. 553(b). Publication of this document constitutes a final action under the APA.

This rule is intended to promote consistent treatment across all industries and reduce confusion when determining eligibility for claiming the section 7(i) exemption. This rule does not impose any new requirements on employers or require any affirmative measures for regulated entities to come into compliance.

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, the Office of Information and Regulatory Affairs (OIRA) designated this rule as not a "major rule," as defined by 5 U.S.C. 804(2). OIRA has also determined that this final rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and has therefore waived its review. Finally, this final rule is not an E.O. 13771 regulatory action because it has been determined to be not significant under E.O. 12866.

#### **I. Background**

The FLSA generally requires covered employers to pay nonexempt employees overtime compensation for time worked in excess of 40 hours per workweek. See 29 U.S.C. 207(a). Section 7(i) of the Act was enacted to relieve employers in retail and service industries from the obligation of paying overtime compensation to certain employees paid primarily on the basis of commissions. In order for an employee to come within this exemption, "the regular rate of pay of such employee [must be] in excess of one and one-half times the [Act's minimum wage]," and "more than half [of the employee's] compensation for a representative period (not less than one month) [must represent] commissions on goods or services." 29 U.S.C. 207(i). In addition, the employee must be employed by a retail or service establishment, which had been defined in section 13(a)(2) of the Act as "'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.'" 29 CFR 779.312 (quoting FLSA section 13(a)(2), Fair Labor Standards Amendments of 1949, Public Law 81-393, section 11, 63 Stat. 910, 917 (1949)).<sup>1</sup>

<sup>1</sup> In 1989, Congress repealed section 13(a)(2)—which provided an exception for intrastate businesses from the FLSA's minimum wage and overtime compensation requirements—and with it, the statutory definition of "retail or service establishment." See Fair Labor Standards Act Amendments of 1989, Public Law 101-157, section

Continued

<sup>1</sup> See OMB Memorandum M-19-14, Guidance on Compliance with the Congressional Review Act (April 11, 2019).

The Department has interpreted “retail or service establishment” as requiring the establishment to have a “retail concept.” 29 CFR 779.316. Such an establishment typically “sells goods or services to the general public,” “serves the everyday needs of the community,” “is at the very end of the stream of distribution,” disposes its products and skills “in small quantities,” and “does not take part in the manufacturing process.” *Id.* at § 779.318(a).

In 1961, the Department introduced in part 779, without notice-and-comment because it was an interpretive rule, a lengthy but non-exhaustive list of 89 types of establishments that it viewed as lacking a “retail concept.” See 26 FR 8333, 8355 (Sept. 2, 1961) (introducing 29 CFR 779.317). In 1970, the Department amended § 779.317, again without notice-and-comment because it was an interpretive rule, to add to the list another 45 establishments that it viewed as lacking a “retail concept.” See 35 FR 5856, 5881–82 (Apr. 9, 1970). Section 779.317 was not amended further.

Section 779.317’s non-retail list included establishments in various industries such as dry cleaners, tax preparers, laundries, roofing companies, travel agencies, blue printing and photostating establishments, stamp and coupon redemption stores, and telegraph companies. The Department’s view was that the establishments on the list could not qualify as retail or service establishments eligible to claim the section 7(i) exemption. Although some of the establishments on the list

included citations to authorities,<sup>2</sup> in most cases § 779.317 did not provide any explanation for why a particular establishment categorically lacked a retail concept.

The same 1961 interpretive rule that introduced § 779.317 also included in part 779 a separate non-exhaustive list of 77 types of establishments that “may be recognized as retail.” See 26 FR 8333, 8356 (Sept. 2, 1961) (introducing 29 CFR 779.320). The Department amended § 779.320 in 1971, again without notice and comment because it was an interpretive rule, to remove “valet shops” from the list. See 36 FR 14466 (Aug. 6, 1971). Section 779.320 was not amended further.

The “may be” retail list included establishment in industries such as coal yards, fur repair and storage shops, household refrigerator service and repair shops, masseur establishments, piano tuning establishments, reducing establishments, scalp-treatment establishments, and taxidermists. Section 779.320 provided no explanation why any of the listed industries were included.

## II. Explanations for Withdrawal of Section 779.317

The Department hereby withdraws the regulatory provision found at 29 CFR 779.317, which lists specific types of establishments that, in the Department’s view, lacked a retail concept and were therefore ineligible to claim the section 7(i) exemption. Establishments which had been listed as lacking a retail concept may now assert under part 779 that they have a retail concept and may be able to qualify as retail or service establishments. The Department will now apply its interpretations set forth in § 779.318 and elsewhere in part 779 to determine whether establishments previously listed in § 779.317 have a retail concept and satisfy the additional criteria necessary to qualify as retail or service establishments.<sup>3</sup> Accordingly, the Department will apply one analysis—the same analysis—to all establishments, thus promoting

consistent treatment for purposes of the section 7(i) exemption.

Moreover, the generally applicable analysis set forth in § 779.318 and elsewhere in part 779 is better suited to account for developments in industries over time regarding whether they are retail or not. For example, an industry may gain or lose retail characteristics over time as the economy develops and modernizes, or for other reasons. A static list of establishments that absolutely lack a retail concept cannot account for such developments or modernization, which could have caused confusion for establishments as they tried to assess the applicability and impact of the list. The generally applicable analysis set forth in § 779.318 and elsewhere in part 779 better addresses each particular establishment’s retail nature or lack thereof and is unlikely to result in similar confusion.

Statements of courts that have questioned the reasoning behind the list in § 779.317 inform the Department’s action. For instance, the Seventh Circuit recently described the list as an “incomplete, arbitrary, and essentially mindless catalog.” *Alvarado*, 782 F.3d at 371. The Ninth Circuit, in turn, said that “the list does not appear to flow from any cohesive criteria for retail and non-retail establishments” and declined to defer to the list with respect to schools. *Martin v. The Refrigeration Sch., Inc.*, 968 F.2d 3, 7 n.2 (9th Cir. 1992); see also, e.g., *Wells v. TaxMasters, Inc.*, No. 4:10–CV–2373, 2012 WL 4214712, at \*6 (S.D. Tex. Sept. 18, 2012) (concluding that the listing of “tax services” in § 779.317 was not determinative and finding that a tax-consulting and tax-preparation services company met part 779’s criteria for a retail or service establishment); *Reich v. Cruises Only, Inc.*, No. 95–660–CIV–ORL–19, 1997 WL 1507504, at \*4–5 (M.D. Fla. June 5, 1997) (concluding that “excluding a travel agency from those establishments possessing a retail concept appear[s] to be arbitrary and without any rational basis explained in the regulations,” especially considering that travel agencies better fit the criteria in § 779.318 than some of the establishments listed in § 779.317). But see, e.g., *Brennan v. Great Am. Discount & Credit Co., Inc.*, 477 F.2d 292, 296–97 (5th Cir. 1973) (finding “the Administrator has considered all relevant issues” in including employment agencies in § 779.317’s list and relying on the regulations to rule that employment agencies lacked the necessary retail concept to qualify as retail or service establishments); *Burden v. SelectQuote Ins. Servs.*, 848 F.

3, 103 Stat. 938, 939 (1989)). However, because “retail or service establishment” was defined in section 13(a)(2) of the Act when the section 7(i) exemption was added to the Act in 1961 and because “the legislative history of the 1961 amendments to the Act [indicated] that no different meaning was intended by the term ‘retail or service establishment’ from that already established by the Act’s definition,” the Department continues to use the repealed section 13(a)(2) definition of “retail or service establishment” to determine whether an employer qualifies as a “retail or service establishment” for purposes of the section 7(i) exemption. See 29 CFR 779.312 (citing legislative history) & § 779.411; WHD Opinion Letter FLSA2005–44, 2005 WL 3308615 (Oct. 24, 2005); WHD Opinion Letter FLSA2003–1, 2003 WL 23374597 (Mar. 17, 2003); see also *Gieg v. DDR, Inc.*, 407 F.3d 1038, 1047 (9th Cir. 2005) (agreeing that repealed section 13(a)(2)’s definition of “retail or service establishment” applies to the section 7(i) exemption); *Reich v. Delcorp, Inc.*, 3 F.3d 1181, 1183 (8th Cir. 1993) (same). But see *Alvarado v. Corp. Cleaning Servs., Inc.*, 782 F.3d 365, 369–71 (7th Cir. 2015) (rejecting the legislative history cited in the Department’s regulations and refusing to apply repealed section 13(a)(2)’s definition of “retail or service establishment” to the section 7(i) exemption because that exemption has a “very different purpose” than the provision in the Act for which the definition was initially included).

<sup>2</sup> Some of the authorities cited have subsequently been called into question. For instance, § 779.317 cited *Schmidt v. Peoples Telephone Union of Maryville, Mo.*, 138 F.2d 13 (8th Cir. 1943) as authority for including telephone companies on the list. More recently, a district court noted that *Schmidt* and the list generally “do not take into account changes in the size of and technologies in the current retail economy.” *In re: DirecTech Sw., Inc.*, No. 08–1984, 2009 WL 10663104, at \*9 (E.D. La. Nov. 19, 2009).

<sup>3</sup> See, e.g., 29 CFR 779.316, 319, 321 (further discussing retail concept) & 779.322–336 (discussing additional criteria to qualify as a retail or service establishment).

Supp.2d 1075, 1084–86 (N.D. Cal. 2012) (finding § 779.317 to be “persuasive” and ruling that defendant fell “within the brokerage industry that section 779.317 finds to lack the requisite retail concept to qualify for an exemption from the FLSA’s overtime requirements”); *McKenzie v. Lindstrom Air Conditioning, Inc.*, No. 08–CV–61378, 2009 WL 10667579, at \*3 (S.D. Fla. Sept. 3, 2009) (noting “the specific carveout for air-conditioning contractors from the retail concept” in § 779.317 and deciding to “follow the guidance provided by this DOL interpretation” to conclude that they do not qualify as retail or service establishments).

### III. Explanations for Withdrawal of Section 779.320

The Department further withdraws the regulatory provision found at 29 CFR 779.320, which listed types of establishments that, in the Department’s view, “may be recognized as retail” and therefore may have been eligible to claim the section 7(i) exemption. Part 779 explains that “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.” 29 CFR 779.321(a). Rather, an establishment on the “may be” retail list was subject to the same retail concept requirements as an establishment not on the list. Thus, establishments on the “may be” retail list will still be found to lack a retail concept if they fail to satisfy the Department’s criteria for retail concept set forth in § 779.318. *See, e.g., Brennan v. Parnham*, 366 F. Supp. 1014, 1023 (W.D. Pa. 1973) (opining that, even if defendant operated “automobile repair garages [as listed] in Section 779.320 . . . he has still failed to meet the second requirement that the particular services must be recognized as retail services”). And establishments not on the “may be” retail list may still be recognized as retail if they satisfy those criteria. *See, e.g., Alvarado v. Corp. Cleaning Serv., Inc.*, 719 F. Supp. 2d 935, 944 n.9 (N.D. Ill. 2010) (holding that window washing business met criteria of a retail establishment set forth at § 779.318(a) even though “[w]indow washing service providers do not appear on [the § 779.320] list”). As such, § 779.320 did not necessarily impact the analysis as to whether any particular establishment was retail.

In addition, and as with § 779.317’s non-retail list, courts have questioned the reasoning behind § 779.320’s “may be” retail list. In *Martin*, for instance, the Ninth Circuit stated that simultaneously listing “dentists, doctors, and lawyer offices” as non-

retail in § 779.317 and “barber shops,” “scalp-treatment establishments,” and other establishments as possibly retail in § 779.320 was inconsistent with the Department’s own criteria in § 779.318 that a retail establishment should provide for “everyday needs of the community” and “the comfort and convenience of [the general] public in the course of its daily living.” 968 F.2d at 7 n.2 (“A community’s tonsorial services are hardly more integral to its daily routine than its medical or dental ones.”). Similarly, the court in *Cruises Only* found it was “arbitrary and without any rational basis” to list travel agencies as non-retail in § 779.317 in part because—in that case—they serve a community’s everyday needs more than at least some industries that may “be recognized as retail” in § 779.320, such as taxidermists or crematoriums. 1997 WL 1507504, at \*4–5. In short, “there appear to be ‘no generating principles’ or ‘cohesive criteria’ underlying the distinction between the businesses that are considered retail establishments as listed in § 779.320 and those which are not as listed in § 779.317.” *Haskins v. VIP Wireless LLC*, 300, No. 09–754, 2010 WL 3938255, at \*3 (W.D. Pa. Oct. 5, 2010) (quoting *Martin*, 968 F.2d at 7 n.2). *But see, e.g., Klinedinst v. Swift Investments, Inc.*, 260 F.3d 1251, 1256 n.5 (11th Cir. 2001) (citing § 779.320 for the proposition that “[a]utomobile repair shops have been explicitly recognized as retail establishments”); *Gilreath v. Daniel Funeral Home, Inc.*, 421 F.2d 504, 508 (8th Cir. 1970) (noting that plaintiffs conceded that a funeral home was a retail or service establishment because, in part, the Department had recognized it as one in § 779.320).

As with establishments previously listed in § 779.317, the Department will apply its interpretations set forth in § 779.318 and elsewhere in part 779 to determine whether establishments previously listed in § 779.320 have a retail concept and satisfy the additional criteria necessary to qualify as retail or service establishments. All establishments may be recognized as retail if they satisfy these criteria, not just those previously listed in § 779.320. And the Department will promote consistent treatment for purposes of the section 7(i) exemption by applying the same retail concept analysis to all establishments.

For the foregoing reasons, the Department concludes that withdrawal from part 779 of the “partial list of establishments” that it viewed as having “no retail concept” and the separate “partial list of establishments” that, in its view, “may be recognized as retail”

is warranted and hereby withdraws §§ 779.317 and 779.320.

Nothing in this action should be construed to suggest that any particular type of establishment previously listed by the Department is, or is not, a retail establishment.

### IV. Administrative Procedure Act

The Department concludes that notice-and-comment rulemaking is not required to withdraw §§ 779.317 and 779.320 from part 779. The APA provides that its general notice-and-comment requirements do not apply to “interpretative rules.” 5 U.S.C. 553(b); *see also Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 101 (2015) (evaluating subregulatory guidance that was an “interpretive rule” and explaining that “[b]ecause an agency is not required [by the APA] to use notice-and-comment procedures to issue an initial interpretive rule, it is also not required to use those procedures when it amends or repeals that interpretive rule”). Because the regulations in part 779 are interpretive rules, the Department declined to engage in notice-and-comment rulemaking when it initially promulgated the §§ 779.317 and 779.320 lists in 1961, *see* 26 FR 8333, and when it later amended them in 1970 and 1971, *see* 35 FR 5856; 36 FR 14466. Accordingly, the Department is not required to engage in notice-and-comment rulemaking to withdraw the lists today, and it declines to do so as it has declined in the past.

Similarly, the APA does not require agencies to delay the effective date of “interpretative rules” following publication in the **Federal Register**. 5 U.S.C. 553(d)(2). Because the regulations in part 779 are interpretive rules, the Department declined to delay the effective date when it initially promulgated the §§ 779.317 and 779.320 lists in 1961, *see* 26 FR 8333, and when it later amended them in 1970 and 1971, *see* 35 FR 5856; 36 FR 14466. Consistent with this prior practice, the Department declines to delay the effective date of its withdrawal of §§ 779.317 and 779.320; the withdrawal takes effect immediately.

### List of Subjects in 29 CFR Part 779

Reporting and recordkeeping requirements, Wages.

Dated: May 8, 2020.

**Cheryl M. Stanton,**  
Administrator.

For the reasons set forth above, the Department of Labor amends Title 29, Part 779 of the Code of Federal Regulations as follows:

**PART 779—THE FAIR LABOR STANDARDS ACT AS APPLIED TO RETAILERS OF GOODS OR SERVICES**

■ 1. The authority citation for part 779 continues to read as follows:

**Authority:** Secs. 1–19, 52 Stat. 1060, as amended; 75 Stat. 65; Sec. 29(B), Pub. L. 93–259, 88 Stat 55; 29 U.S.C. 201–219.

**§ 779.317 [Removed and Reserved]**

■ 2. Remove and reserve § 779.317.

**§ 779.320 [Removed and Reserved]**

■ 3. Remove and reserve § 779.320.

[FR Doc. 2020–10250 Filed 5–18–20; 8:45 am]

**BILLING CODE** 4510–27–P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 200512–0134]

**RIN 0648–BI77**

**Fisheries of the Northeastern United States; Habitat Clam Dredge Exemption Framework**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS approves and implements the New England Fishery Management Council's Habitat Clam Dredge Exemption Framework Adjustment to its Fishery Management Plans. This action establishes three areas within the Great South Channel Habitat Management Area where vessels may fish for Atlantic surfclams or blue mussels with dredge gear. This action is intended to provide the fishing industry access to part of the surfclam and blue mussel resource within the Habitat Management Area while balancing the Council's habitat conservation objectives.

**DATES:** Effective June 18, 2020.

**ADDRESSES:** An environmental assessment (EA) has been prepared for this action that provides an analysis of the impacts of the measures and alternatives. Copies of the EA are available on request from Thomas Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. This document are also accessible via the internet at [www.nefmc.org](http://www.nefmc.org).

Written comments regarding the burden-hour estimates or other aspects

of the collection-of-information requirements contained in this final rule may be submitted to the Greater Atlantic Regional Fisheries Office (GARFO) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, 978–281–9341.

**SUPPLEMENTARY INFORMATION:****Background**

The Great South Channel Habitat Management Area (GSC HMA) was created by the final rule to implement the New England Fishery Management Council's Omnibus Habitat Amendment 2 (OHA2) (83 FR 15240; April 9, 2018). The use of all mobile bottom-tending fishing gear is prohibited in the GSC HMA. The GSC HMA contains complex benthic habitat that is important for juvenile cod and other fish species, and it is susceptible to the adverse impacts of fishing gear. The OHA2 included a 1-year delay of the mobile gear closure that allowed the surfclam fishery to continue fishing with hydraulic clam dredges in the area. This delay was intended to give the Council time to determine if a long-term exemption is warranted. The 1-year delay ended on April 9, 2019, and the GSC HMA is now closed to all mobile bottom-tending fishing gear, including clam and mussel dredges.

The Council initiated the Habitat Clam Dredge Exemption Framework Adjustment in 2015 as a trailing action to OHA2. Development of the framework was guided by a problem statement approved by the Council in October 2015:

The Council intends through this action to identify areas within the Great South Channel and Georges Shoal Habitat Management Areas that are currently fished or contain high energy sand and gravel that could be suitable for a hydraulic clam dredging exemption that balances achieving optimum yield for the surfclam/ocean quahog fishery with the requirement to minimize adverse fishing effects on habitat to the extent practicable and is consistent with the underlying objectives of [OHA2].

In the final stages of OHA2 development, the Council was also approached by parties interested in developing a blue mussel dredge fishery in the GSC HMA. Currently, there is no Federal blue mussel fishery management plan.

NMFS disapproved the Georges Shoal HMA that the Council recommended in OHA2. The dredge exemption framework became solely focused on the GSC HMA following implementation of OHA2. Development of the Habitat Clam Dredge Exemption Framework

occurred over several meetings of Council's Habitat Plan Development Team, Committee, and the full Council. The Council took final action at its December 2018 meeting selecting preferred alternatives and approving the action for submission to NMFS. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the Fishery Management Plans (FMPs), the Magnuson-Stevens Act and its National Standards, and other applicable law. NMFS generally defers to the Council's policy choices unless there is a clear inconsistency with the law or the FMP.

A proposed rule detailing implementing regulations for this framework was published on September 17, 2019 (84 FR 48899), with a comment period open through October 17, 2019. In response to a request by the Council, the comment period was reopened November 4, 2019, through November 18, 2019. In total, 68 comments were submitted on the proposed measures and are discussed below in the Comments and Responses section.

**Final Measures**

This action implements three dredge exemption areas (McBlair, Old South, and Fishing Rip) within the GSC HMA where vessels can fish for surfclams or blue mussels. Tables 1 through 3 contain the coordinates for the new exemption areas. These areas are illustrated in Figure 1. Each area is defined by the following points connected in the order listed by straight lines.

**TABLE 1—COORDINATES FOR McBLAIR DREDGE EXEMPTION AREA**

| Point   | Longitude    | Latitude     |
|---------|--------------|--------------|
| 1 ..... | 69°49.255' W | 41°25.878' N |
| 2 ..... | 69°46.951' W | 41°25.878' N |
| 3 ..... | 69°46.951' W | 41°19.34' N  |
| 4 ..... | 69°49.187' W | 41°19.34' N  |
| 1 ..... | 69°49.255' W | 41°25.878' N |

**TABLE 2—COORDINATES FOR OLD SOUTH DREDGE EXEMPTION AREA**

| Point   | Longitude    | Latitude     |
|---------|--------------|--------------|
| 1 ..... | 69°47' W     | 41°15' N     |
| 2 ..... | 69°44' W     | 41°15' N     |
| 3 ..... | 69°44.22' W  | 41°10.432' N |
| 4 ..... | 69°45' W     | 41°7' N      |
| 5 ..... | 69°47' W     | 41°7' N      |
| 6 ..... | 69°47' W     | 41°11' N     |
| 7 ..... | 69°49.101' W | 41°11' N     |
| 8 ..... | 69°49.116' W | 41°12.5' N   |