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Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 446—PEANUTS

Subpart—1961 Crop Peanut Price Support Program

Correction

In F.R. Doc. 61-8109, appearing at page 7863 of the issue for Thursday, August 24, 1961, the following corrections are made in § 446.1334:

1. In paragraph (c) (1), the dimensions reading " $\frac{13}{64} \times 1$ inch" should read " $\frac{13}{64} \times \frac{3}{4}$ inch".

2. In paragraph (d) (2) (ii), the dimensions reading " $\frac{13}{64} \times$ inch" should read " $\frac{13}{64} \times 1$ inch".

PART 475—EMERGENCY FEED PROGRAM

Subpart—Livestock Feed Program

This bulletin contains regulations pertaining to a continuing Livestock Feed Program and is issued by the Commodity Credit Corporation.

Sec.

475.201	General statement.
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AUTHORITY: §§ 475.201 to 475.214 issued under secs. 1-4 of 73 Stat. 574 and sec. 407 of 63 Stat. 1055 as amended by 75 Stat. 293. Interpret or apply secs. 4 and 5 of 62 Stat. 1070, as amended; 15 U.S.C. 714 b c; 7 U.S.C. 1427.

§ 475.201 General statement.

The regulations in this subpart contain the terms and conditions of a livestock feed program formulated under Public Law 86-299 and Public Law 87-127. The objective of the program is to give assistance to livestock owners in designated emergency areas through sales at not less than 75 percent, or more than 100 percent of applicable current support prices of feed grains owned by Commodity Credit Corporation (hereinafter called CCC), as determined by CCC. CCC is not authorized to sell feed grains at such prices under this program to any livestock owners unless such person does not have, and is unable to obtain through normal channels of trade without undue financial hardship, sufficient feed for livestock owned by him, and unless such

person uses such feed grains only for feed for such livestock. The program shall be in effect in designated emergency areas where the Secretary of Agriculture (hereinafter called Secretary) determines there is a shortage of feed because of flood, drought, fire, hurricane, storm, tornado, earthquake, or other catastrophe, including disease or insect infestation. Certification of the need for the program must be made by the Governor of the State. After receipt of such certification, the Secretary may designate the emergency area within the State where the assistance will be given under the program. In making such designation, the Secretary will take into consideration the information and recommendation submitted by the State USDA Disaster Committee based on information and recommendations supplied by the county USDA disaster committees concerned, and may also take into consideration other information about conditions in the area which may be available to him.

§ 475.202 Administration.

The program will be administered by Agricultural Stabilization and Conservation Service (hereinafter called ASCS) and CCC under the general direction and supervision of the Executive Vice President, CCC, and in the field will be carried out by the ASCS State and county committees and offices (hereinafter called State and county committees and offices) and ASCS commodity offices. State and county committees and offices, ASCS commodity offices, and representatives and employees of any of the above do not have authority to modify or waive any of the provisions of this subpart or any amendments or supplements thereto.

§ 475.203 Definitions.

The following terms shall have the following meanings in this subpart and in all forms and documents used in connection herewith (except where the context or subject matter otherwise requires, or where otherwise defined in the Livestock Feed Program).

(a) "Emergency area" means an area designated by the Secretary under Public Law 86-299 and Public Law 87-127 as an area of emergency in which assistance will be given under the Livestock Feed Program.

(b) "Emergency county" means a county in which all or any part thereof is within the emergency area.

(c) "Owner" means any individual, partnership, corporation, cooperative, or other business entity which (1) owns or jointly owns the eligible livestock to be fed with the feed grains to be purchased under the program, or has a beneficial interest in whole or in part in such eligible livestock, and (2) meets the requirements of eligibility contained in § 475.204 of this subpart.

(d) "Feed grains" means barley, corn, grain sorghums and oats, and also when

designated by the Executive Vice President of CCC or his designee, wheat and rye.

(e) "CCC-owned grains" means feed grains owned by CCC.

(f) "Loan grain" means the owner's feed grains which are stored in the emergency county where the principal part of the owner's livestock is usually located or contiguous county and which secure price support loans, obtained prior to the date the emergency county was designated.

(g) "Prescribed period" means the period of time during which this program will be in effect in an emergency area.

(h) "Authorized period" means the period used in computing the maximum quantity of feed grain which may be purchased by the owner under a single application. The authorized period shall commence on the date the application is filed and shall extend for such period as may be determined by the State committee, except that it shall not extend beyond the last day of the prescribed period.

(i) "Warehouse" means a warehouse which is currently operating under a Uniform Grain Storage Agreement (CCC Form-25).

(j) "Handler" means any person (including but not limited to any individual, partnership, corporation, cooperative, or other business entity) which is approved by the county committee to perform applicable delivery services.

(k) "Livestock" means all classes of beef and dairy cattle, sheep, goats, swine, and work animals such as horses and mules.

(l) "Eligible livestock" means (1) livestock which have been owned by the applicant at least six months prior to the date of his application to purchase feed for such livestock and which were located in the emergency area on the date such area was designated an emergency area or, as determined by the State committee, were moved in to the area in accordance with the owner's normal livestock operation, such as rotation grazing; (2) producing dairy cows, cattle, sheep, and goats purchased by the applicant as replacement breeding stock according to his customary normal breeding operations; and (3) offspring of livestock described in subparagraphs (1) and (2) of this paragraph. In the case of livestock inherited by an applicant for feed grain, the ownership of the decedent from whom the applicant inherited such livestock shall be deemed to be ownership by the applicant for the purpose of the six months ownership requirement.

(m) "Primary livestock" means the following eligible livestock which constitutes the owner's foundation herd: (1) Cows kept for the production of milk; (2) male and female cattle, sheep and goats kept for breeding purposes, and their offspring kept for replacement purposes; and (3) replacement breeding

stock customarily purchased in normal breeding operations.

(n) "Secondary livestock" means eligible livestock other than primary livestock.

(o) "Animal unit" means one cow, feeder heifer, bull or steer; two other heifers; three calves; five sheep; five goats; seven lambs or kids; three sows or hogs on full grain ration; five other swine; and one horse or mule.

(p) "Bin site" means a plot of ground upon which CCC-operated storage facilities are located.

(q) "Undue financial hardship" means that an applicant does not have on hand sufficient feed for his livestock for the authorized period and is unable to obtain such feed from normal suppliers without sustaining an operating loss, and that the applicant's financial condition is such that this loss will interfere with his obtaining necessary financing for his livestock operation in the future or will otherwise imperil his continued livestock operation.

§ 475.204 Eligibility provisions.

Subject to the terms and conditions hereinafter prescribed in this subpart, the owner of eligible livestock may purchase feed grains for such eligible livestock hereunder, if he meets the following eligibility requirements:

(a) Undue financial hardship exists with respect to such owner. In determining whether there is undue financial hardship consideration shall be given to the effect of the emergency (1) on the quantity of feed the owner is required to purchase in excess of his normal feed purchases, and (2) the increased price of such feed.

(b) Prior to the purchase of grain hereunder, such owner shall repay the principal and interest on all his price support loans on current crops of oats, barley, grain sorghums and corn which were obtained after the county was designated an emergency area, and shall notify CCC in writing that no feed grains on which he has purchase agreements will be delivered to CCC. The foregoing requirement shall only apply to such owner's grain stored in the emergency county in which the application is filed or in a contiguous county.

(c) A properly executed application is filed by such owner.

§ 475.205 Application and approval.

(a) *Who may apply.* Any owner of eligible livestock who fulfills the requirements of § 475.204 may file an application under this program. When an application is filed by an individual, by a partnership or duly authorized representative of a partnership, or in the name of a corporation which is wholly or substantially (i.e., 75 percent or more) owned by an individual and those related to him by blood or marriage, such individual, partner, or duly authorized representative of the partnership or corporation shall execute a certification that the individual, the partnership and each and every partner thereof, or the corporation and each stockholder thereof, do not have sufficient feed for the authorized period for the livestock, owned by

the applicant and located in the emergency area, and are unable to obtain the quantity of feed requested in the application for such livestock for the authorized period from normal suppliers without sustaining an operating loss, and that the financial condition of the individual, of the partnership and the individual partners, or of the corporation and individual stockholders is such that the loss will interfere with obtaining necessary financing for the livestock operation in the future or will otherwise imperil the continued livestock operation. When an application is filed in the name of a corporation, except a family corporation as described above, the application must be accompanied by a certified copy of a resolution by the Board of Directors for such corporation authorizing the purchase of grain under the Livestock Feed Program in behalf of said corporation.

(b) *Where to apply.* Form DF-6, Application and Certification (hereinafter called Form DF-6) must be duly executed and filed at a county office located in the emergency area which is the usual location of the principal part of the livestock for which the feed grains are purchased. A Form DF-6 shall not be filed in more than one county for the same livestock for the prescribed period or any portion thereof.

(c) *Filing of applications.* (1) The applicant shall furnish all information required of him on the Form DF-6, and shall certify as to the requirements specified in § 475.204.

(2) Applications for additional feed grains may be filed at any time by an owner provided that the period for which feed grains are requested falls within the prescribed period.

(3) The date of filing shall be the date the application is received in the county office.

(4) The quantity of feed grain requested by the applicant shall not include any quantity which he is able to obtain for his eligible livestock for the authorized period without incurring undue financial hardship.

(d) *Committee action on applications.* (1) The county committee shall review each Form DF-6 and approval shall be given or recommendation for approval made only if the applicant meets the eligibility requirements. Applications shall be considered by the county committee only if filed as provided in paragraph (c) of this section.

(2) The maximum quantity of feed grain which may be approved for purchase by an applicant for the authorized period shall not exceed:

(i) Ten pounds per day for feed grains per animal unit, or whatever lesser quantity is established by the State committee, for the following kinds and classes of eligible livestock:

GROUP 1

Dairy cattle two years old and over, excluding dairy bulls;
Beef cattle, excluding bulls and calves, on full grain ration;
Sows and hogs on full grain ration;
Sheep and lambs on full grain ration; and
Work horses and mules.

(ii) Five pounds per day of feed grain per animal unit, or whatever lesser quantity is established by the State committee, for the following kinds and classes of eligible livestock:

GROUP 2

Dairy cattle under two years old and bulls;
Beef cattle not on full grain ration and bulls;
Swine not on full grain ration;
Sheep and lambs not on full grain ration; and
Goats.

(3) The actual quantity of feed grains which shall be approved for purchase by an applicant during the authorized period shall be the smaller of: (i) The maximum quantity of feed grains which may be approved for purchase less the total quantity of feed available to the applicant for feeding his eligible livestock during the authorized period, or (ii) the quantity of feed grain requested by the applicant on his Form DF-6.

(4) In determining the total quantity of feed available when the applicant is a partnership or a family corporation, the quantity of feed each partner or member of the family corporation has available shall be combined and considered feed of the applicant. The total quantity of feed available to the individual, partnership or corporate applicant shall be:

(i) Feed grain already on hand excluding (a) that which was placed under price support loan before the county was designated as an emergency area; (b) the quantity reserved for the applicant's normal seeding requirements; and (c) wheat and rye, if not designated as feed grains in that county by the Executive Vice President of CCC;

(ii) Feed grain sold by the applicant in the period beginning 30 days prior to the date the county was designated an emergency area, except that which was sold to reduce indebtedness on which payment was then essential;

(iii) Estimated feed grain to be harvested during the authorized period;

(iv) Feed to be delivered under this or other emergency programs during the authorized period; and

(v) Ensilage, alfalfa or other hay or forage including pasture already on hand or to be produced during the authorized period, which is of sufficiently high quality that it may be substituted for feed grains.

(5) The quantity of feed available to the applicant shall be considered available for his other livestock in the emergency county or a contiguous county as well as his eligible livestock, provided that such feed shall be allocated between eligible livestock and such other livestock in accordance with the applicant's normal feeding operations.

(6) An applicant which is a partnership shall be eligible, if it meets the standards of eligibility provided in this subpart taking into consideration the resources of each of the partners in the partnership. If the applicant is a corporation which is wholly or substantially (i.e., 75 percent or more) owned by an individual and those related to him by blood or marriage, the county committee shall, for the purpose of determining the

eligibility of such applicant to receive assistance, disregard the corporate entity and treat the corporation as a partnership composed of the individual and those related to him by blood or marriage. The resources of such individual and each stockholder related by blood or marriage must be taken into consideration in determining the eligibility of the family corporation to receive assistance.

(7) The county committee shall review all applications and base its determinations or recommendations primarily upon the information supplied by the applicant, but shall take into consideration other information available to it, including knowledge of the committee-men concerning the applicant's normal operations. Where information furnished by the applicant is incomplete or not clear, the county committee will request such additional information of the applicant as may be necessary. Where the personal knowledge of the committeemen of the applicant's operations and financial condition does not warrant approval of the application without further information, the county committee shall request the applicant to furnish or may obtain from other sources the additional information it needs to reach a decision.

(8) Each Form DF-6 shall be considered by at least two members of the county committee. The action taken or recommendations made with respect to each Form DF-6 shall be based upon the combined judgment and decision of two or more members of the county committee, and such combined judgment and decision will be indicated in the appropriate space provided on the Form DF-6. If the application is rejected, a brief statement of the reasons for such action will be given in the space provided for that purpose. At least two members of the county committee who considered the Form DF-6 shall sign the original and copy of the form in behalf of the county committee. The original shall be retained in the county office and a copy delivered to the applicant, showing the action taken.

(9) In connection with Forms DF-6 submitted by State and county committeemen, State and county office personnel and those involving 500 or more animal units of eligible livestock, the county committee shall make recommendations with respect to the eligibility of the applicant and the quantity of grain which such applicant is entitled to purchase in accordance with the standards prescribed in this subpart. Such recommendation, together with the Form DF-6, shall be forwarded to the State committee. The action on applications filed by (i) county committeemen and county office personnel for less than 500 animal units shall be taken by the State committee or an employee of the State office designated by the State committee, (ii) State office personnel and those involving 500 animal units, except applications by State committeemen, shall be taken by the State committee, and (iii) State committeemen shall be taken by the Deputy Administrator for State and County Operations, ASCS. The final determinations with respect to such applications shall be made on the basis of the same standards and subject to the same limitations as

the action taken by the county committee.

(e) Any applicant who is dissatisfied with determinations as to (1) his eligibility or eligibility of his livestock, or (2) quantity of feed grain approved for primary or secondary livestock may, within 15 days after transmittal of notification of these determinations, request reconsideration thereof by the county committee. An applicant requesting reconsideration must submit in writing a statement of the facts on which the request for reconsideration is based. Such statement must be postmarked or delivered to the office of the county committee within 15 days after the date of transmittal of the notice of the determination for which reconsideration is requested. If the applicant is dissatisfied with the decision of the county committee with respect to his request for reconsideration, he may appeal to the State committee within 15 days after the date of mailing the notice of decision of the county committee. No appeal may be had by the applicant from the determination of the State committee.

§ 475.206 When sales shall be made.

Sales shall be made by CCC during the prescribed period.

§ 475.207 Sales made through county offices.

When an owner desires to purchase grain pursuant to an approved application, prior to delivery of any grain hereunder, he shall make payment to a county committee by means of an acceptable remittance for the estimated purchase price. Upon determination of the final amount due CCC, any over or underpayment shall be promptly settled between the county committee and the owner.

§ 475.208 Pricing of grains.

(a) *Applicable price of feed grain for primary livestock.* The sale price of quantities of any feed grain approved for primary livestock shall be 75 percent of the applicable current price support rate, except that sales of corn prior to October 1, 1961, shall be 75 percent of the 1961 crop price support rate.

(b) *Applicable price of feed grain for secondary livestock.* The sale price of quantities of any feed grains approved for secondary livestock shall be the applicable current price support rate.

(c) *Price support rate.* As used in paragraphs (a) and (b) of this section, "price support rate" shall mean the price support rate, including premiums and discounts established for class, grade and quality, for the county in which the grain is delivered as set forth in the applicable CCC Price Support Bulletin.

(d) *Transit billing.* Transit billing privileges behind grain delivered to an owner shall not be transferred to him.

(e) *Net quantity.* Sales shall be on a net quantity basis.

§ 475.209 Availability of grain.

(a) *General.* Feed grains under price support loans and feed grains owned by CCC will be made available under this program as hereinafter provided. CCC reserves the right to determine the quan-

ties, kinds, classes, grades and qualities of grain which will be made available for sale in an emergency area. The State committee shall be advised by the Deputy Administrator, State and County Operations, ASCS, of the kinds of grain to be made available for sale in an emergency area. If the State or county committee has reason to believe that an owner has not fully complied with these regulations, delivery of grain to him shall be suspended. CCC does not warrant the grade, quality or dockage content of any grain sold under this program, regardless of the basis on which sold nor the fitness of any such grain for any particular use.

(b) *Redemptions.* In lieu of purchasing feed grain from CCC an applicant may redeem any feed grains under price support loans, on barley, corn, grain sorghum or oats. Such redemption may include part of the grain under a farm stored loan. If partial redemption is made of farm stored loan grain, such grain shall be inspected and segregated and storage adjustments made as provided in § 475.210(b) (2), (3), and (4). The quantity of feed grain which may be purchased by the applicant under this program shall be reduced by the quantity so redeemed.

§ 475.210 Loan grain.

(a) *General.* No CCC-owned grain will be sold to an owner until all of his loan grain (see § 475.203(f)) has been redeemed or purchased by him in accordance with this section except that in the case of warehouse stored loan grain no purchase or redemption (1) will be required of grain which has transit billing or (2) will be required or permitted of any quantity less than that represented by a warehouse receipt.

(b) *Loan grain in farm storage.* (1) If the quantity of feed grains approved for purchase on an application equals or exceeds the quantity of feed grain which an applicant has under a farm storage price support loan, including any reseal or extended reseal loan, CCC will (i) accelerate the maturity date of the loan, (ii) permit delivery to CCC on the farm where stored of the owner's grain mortgaged to CCC in settlement of such loan, and (iii) require the owner to purchase such grain at the price or prices approved on the application and redeliver it to him on the farm where stored.

(2) An inspection shall be made by a representative of the county committee of the loan grain to be redeemed or delivered prior to redemption or delivery. If it is determined that all the grain under loan is still in storage, notwithstanding the provisions of the applicable price support bulletin, settlement of the loan shall be made on the basis of the quantity and quality set forth in the loan documents. If on inspection of the grain a shortage is discovered, the owner shall be ordered to deliver the grain to a point where weights can be obtained and settlement with the owner shall be made on the basis of such weights in the manner provided in the loan documents and price support bulletin.

(3) In computing storage payments due under reseal loans, the pro-rata payments to which the owner is entitled

shall be based on the storage period ending on the date the commodity is delivered to CCC in satisfaction of the loan.

(4) If the quantity of any feed grain approved for purchase on an application is less than the quantity under a loan, including any reseal or extended reseal loan, CCC shall, notwithstanding any provision of the loan documents to the contrary, (i) require advance delivery to CCC on the farm where stored of a quantity of the loan grain equal to the quantity to be purchased, (ii) accept delivery of such quantity of loan grain, (iii) credit the owner's loan with the settlement value of the quantity and quality delivered, in accordance with the settlement provisions set forth in the loan documents, and (iv) require the owner to purchase the approved quantity of grain at the price or prices authorized on the approved application and redeliver it to him on the farm where stored. The quantity so purchased by the owner shall be removed from the storage structure and segregated from the grain which remains as collateral for the outstanding balance of the loan. The provision as to inspection and adjustment for storage charges in subparagraphs (2) and (3) of paragraph (b) of this section shall apply to any grain so delivered. If on inspection of the grain a shortage is discovered, the maturity of the entire loan shall be accelerated.

(c) *Loan grain in warehouse storage.* (1) If the quantity of feed grain approved for purchase on an application equals or exceeds the quantity which an owner has under warehouse storage loan in the emergency county or a contiguous county, CCC shall (i) accelerate the maturity date of the loan, (ii) acquire title to such grain in satisfaction of the loan, and (iii) require the owner to purchase such grain by delivering to him the warehouse receipts representing such grain. Settlement on such warehouse storage loans will be made as provided in the applicable loan documents and price support bulletin.

(2) If the quantity of feed grain approved for purchase on an application is less than the quantity which an owner has under warehouse storage loan but equals or exceeds the quantity represented by one or more warehouse receipts, CCC shall (i) credit the owner's loan with the settlement value of the quantity and quality represented by such warehouse receipts in accordance with the settlement provisions set forth in the applicable loan documents and price support bulletin, and (ii) require the owner to purchase CCC's right, title and interest in such grain by delivering to him the warehouse receipts representing such grain.

(3) The provisions of this section apply only to warehouse storage loans on grain with no transit privileges. Title and risk of loss shall pass to the owner on delivery to him of the warehouse receipts. Any differences in grade, quality and quantity of grain delivered by the warehouseman to the owner from that described on the warehouse receipts shall be settled between the owner and the warehouseman.

(4) In the case of grain delivered to an owner which has been under a warehouse storage loan, the owner shall be responsible to the warehouseman for payment of all warehouse charges on the grain. CCC shall refund to the owner any storage charges which had been deducted by it from the loan proceeds for the period beginning with the date of delivery to the owner on the quantity of grain purchased by the owner. CCC shall also pay to the owner the receiving and load out charge applicable to the grain in an amount not to exceed the rate specified in the Uniform Grain Storage Agreement.

§ 475.211 Sales of CCC-owned grain.

CCC reserves the right to determine the delivery point of CCC-owned grain sold under this program. Delivery of CCC-owned grain shall be authorized by issuance of non-transferable delivery orders after payment is received. An owner who wishes to have grain delivered to him by CCC ground or custom mixed may do so, provided the grain which is ground or mixed is the very same grain as is delivered to him. All charges for grinding or mixing shall be for the owner's account. CCC shall not be responsible for any sacking costs. On sales basis delivery in-store in a warehouse or in a handler's facility, differences in the value of the grade, quality, and net quantity of the grain delivered to the owner from that shown on the delivery order shall be settled between the owner and the warehouseman or handler.

(a) *Warehouse stored CCC-owned grain.* (1) Warehouse stored grain shall be sold basis in-store in the warehouse, or for delivery f.o.b. the owner's conveyance at the warehouse, at the option of the owner, except that if grain is to be custom-mixed or ground, it shall be sold on an in-store basis only. The county office will issue to the owner a delivery order drawn on the warehouseman setting forth the delivery basis, the quantity, kind, class, grade and quality of grain to be delivered, and the warehouse at which the grain is to be delivered. The owner shall promptly obtain the grain by presenting the delivery order to the warehouseman. Warehouse receipts or other documents representing such grain shall be released to the warehouseman under a trust order prior to the time the grain is sold.

(2) CCC shall only be responsible for storage charges up to and including the date of issuance of the delivery order. On sales made for delivery f.o.b. conveyance at the warehouse, CCC shall be responsible for the loading out charge.

(3) In the case of an in-store delivery, title and risk of loss to the grain specified in the delivery order shall pass to the owner upon date of issuance of the delivery order. In the case of delivery f.o.b. the owner's conveyance, title and risk of loss to the grain specified in the delivery order shall pass to the owner at the time of load out.

(b) *Bin site stored grain.* (1) Bin site stored grain shall be sold basis delivery f.o.b. the owner's conveyance at the bin site.

(2) Title and risk of loss on sales made for delivery f.o.b. the owner's conveyance at the bin site shall pass to the owner when the grain is placed in his conveyance at the bin site, unless the owner removes the grain from the bins, in which event risk of loss shall pass to the owner at the time he takes possession of the grain.

(3) On sales basis f.o.b. conveyance at the bin site, CCC shall be responsible for bin emptying charges and the cost of weighing. Delivery weights on such sales shall be obtained at a usual weighpoint for the bin site determined by the county office. Trucking costs to such weighpoint shall be for the account of the owner.

(4) Applicable bin emptying and weighing services on bin site sales shall be performed under the usual county office agreements at the prevailing rates in the county, or by ASC personnel; at the option of CCC.

(5) Bin site grain shall be sold on a grade basis. On such sales the sale price shall be subject to adjustment for the grade and quality actually delivered, and the quantity delivered shall be adjusted for dockage content on grains on which dockage applies under the Official Grain Standards of the United States.

(6) Inadvertent overdeliveries of grain sold for delivery f.o.b. conveyance at the bin site shall be priced at the applicable current price support rate.

(c) *Delivery in areas where there are no warehouses on bin site stored grain.* Grain shipped into such areas shall be consigned to the county committee. CCC shall pay all transportation costs to the carrier's unloading point. Such grain shall be sold "as is", basis delivery f.o.b. the owner's conveyance at such carrier's unloading point, basis delivery in-store in a handler's facility, or basis delivery f.o.b. the owner's conveyance at a handler's facility at the option of CCC. On sales on an "as is" basis, the sale price shall not be subject to adjustment for the grade or quality actually delivered, but shall be subject to quantity adjustment for dockage content on grains on which dockage applies under the Official Grain Standards of the United States. CCC shall bear the charges for the following handling services, if applicable, on such sales at rates approved by the State committee.

(1) Applicable handling services shall be as follows:

(i) Unloading the grain from the carrier's vehicle, and loading the grain into the owner's conveyance under the supervision of the county committee.

(ii) Required trucking to a receiving facility determined by the county committee, provided that CCC shall not be responsible for trucking in excess of three miles.

(iii) Weighing, if applicable, under the supervision of the county committee.

(iv) Receiving grain in a handler's facility, approved by the county committee, provided that the grain is unloaded into the facility.

(v) Loading the grain into the owner's conveyance at the handler's facility.

(2) On sales basis delivery f.o.b. conveyance at the carrier's unloading point

CCC shall be responsible for the charges for the services indicated in subdivisions (i) and (iii) of subparagraph (1) of this paragraph, if the grain is weighed. On sales basis delivery in-store in the handler's facility, CCC shall be responsible for the charges for the services indicated in subdivisions (i), (ii), (iii) (if the grain is weighed), and (iv) of subparagraph (1) of this paragraph. On sales basis delivery f.o.b. conveyance at the handler's facility CCC shall be responsible for the charges for the services indicated in subdivisions (i), (ii), (iii) (if the grain is weighed), (iv), and (v) of subparagraph (1) of this paragraph. Grain on sales in areas where there are no warehouses or bin site stored grain shall be weighed at destination, if scales approved by CCC are available, unless the owner is willing to settle on CCC determined weights. If such approved scales are not available, settlement weights shall be as determined by CCC.

(3) Title and risk of loss on such sales shall pass to the owner upon delivery of the grain. The owner shall be responsible for risk of loss during such time as he may have possession of the grain prior to delivery.

(4) CCC shall not be responsible for storage charges on sales in areas where there are no warehouses or bin site stored grain. When practicable, delivery services will be performed by a handler under arrangements with the county committee.

§ 475.212 Grain on hand and not used.

Where the grain acquired under the program has not been fed to eligible livestock and the number of eligible livestock is substantially reduced, or a substantial part of the eligible livestock is sold or removed from the emergency area, the owner shall report promptly thereafter the quantity and kind of grain on hand to the county office from which the grain was purchased. The owner shall then pay the county committee an amount equal to the difference between the applicable price paid for the grain and the market price on the purchase date for the quantity of grain on hand beyond his requirements for the remainder of his eligible livestock in the emergency area as determined by the county committee, and dispose of the grain as he chooses.

§ 475.213 Maintenance of books and records.

The handler or warehouseman shall maintain and preserve for at least three full years following deliveries made against delivery orders, and for such additional period as CCC may request in writing, books and records which will permit verification of all transactions with regard to delivery orders. An examination of such books and records by a duly authorized representative of the United States shall be permitted at any time during business hours.

§ 475.214 Termination.

The program provided for in this part may be terminated at any time upon issuance of public notice in the FEDERAL REGISTER. Such termination shall not apply with respect to any delivery order

issued prior to the effective date of such termination.

The record-keeping and reporting requirements of these regulations have been approved by, and subsequent record-keeping and reporting requirements will be subject to, the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Signed at Washington, D.C., on August 29, 1961.

ROBERT G. LEWIS,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 61-8453; Filed, Sept. 1, 1961;
8:52 a.m.]

Title 7—AGRICULTURE

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

SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Sugar Determination 868.13]

PART 868—SUGARCANE; VIRGIN ISLANDS

Wage Rates; Calendar Year 1961

Pursuant to the provisions of section 301(c) (1) of the Sugar Act of 1948, as amended, (herein referred to as "act"), after investigation, and consideration of the evidence obtained at the public hearing held in Christiansted, St. Croix, Virgin Islands, on October 18, 1960, the following determination is hereby issued.

§ 868.13 Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in the Virgin Islands during the calendar year 1961.

(a) *Requirements.* A producer of sugarcane in the Virgin Islands shall be deemed to have complied with the wage provisions of the act during the calendar year 1961 if all persons employed on the farm in the production, cultivation, or harvesting of sugarcane shall have been paid in accordance with the following:

(1) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates as agreed upon between the producer and the worker, but not less than the following:

(i) *Basic time rates.* The basic rate per hour for the first 8 hours of work performed in any 24-hour period shall be as follows:

Class of worker:	Basic rates per hour
A—Operators of mechanical loaders..	\$0.75
B—Operators of tractors and trucks..	.60
C—Chemical sprayers.....	.55
D—All others.....	.50

(ii) *Apprentice operators of mechanical loaders and tractors.* For a learner or apprentice the hourly wage rate for Class A work in subdivision (i) of this subparagraph may be reduced by not more than 15 cents per hour, and the hourly rate for tractor operators in Class B of subdivision (i) of this subparagraph

may be reduced by not more than 10 cents per hour: *Provided*, That the training period for such workers shall not exceed six work-weeks and: *Provided further*, That the producer shall file with the Caribbean Area Agricultural Stabilization and Conservation Office, San-turce, Puerto Rico (herein referred to as Area Office), a certified statement containing the names of all such workers, the hourly wage rate paid to each, and the period each was employed as a learner or as an apprentice.

(iii) *Handicapped workers.* For an individual whose productive capacity is impaired by age or physical or mental deficiency, the hourly wage rates provided under subdivision (i) of this subparagraph may be decreased by not more than one-third: *Provided*, That the employer shall file with the Area Office, a certified statement containing the names of all such workers, the hourly wage rates paid to each, and the nature of the handicap of each such worker.

(iv) *Overtime.* Persons employed in excess of 8 hours in any 24-hour period or in excess of 40 hours in any one week shall be paid for the overtime work at a rate not less than one and one-half times the applicable hourly rate provided in subdivisions (i), (ii), and (iii) of this subparagraph: *Provided*, That this provision shall be inapplicable to workers who are employed under extraordinary emergencies as defined in applicable Municipal or Territorial laws or regulations.

(v) *Piecework rates.* If work is performed on a piecework basis, the rate shall be as agreed upon between the producer and the worker: *Provided*, That the hourly rate of earnings for each worker employed on piecework during each pay period (such pay period not to be in excess of two weeks) shall average for the time involved not less than the applicable hourly rate provided under subdivisions (i), (ii), (iii), and (iv) of this subparagraph.

(2) *Compensable working time.* For work performed under subparagraph (1) of this paragraph, compensable working time includes all time which the worker spends in the performance of his duties except time taken out for meals during the work day. Compensable working time commences at the time the worker is required to start work in the field and ends upon completion of work in the field. However, if the producer requires the operator of mechanical equipment, driver of animals, or any other class of worker to report to a place other than the field, such as an assembly point, stable, tractor shed, etc., located on the farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Any time spent in performing work directly related to the principal work performed by the worker such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to the farm is not compensable working time.

(b) *Proof of compliance.* The producer shall, upon request, furnish the Area Office acceptable and adequate

proof which satisfies such office that all workers have been paid in accordance with the requirements of this section.

(c) *Subterfuge.* The producer shall not reduce the wage rates to workers below those determined in accordance with the requirements of this section through any subterfuge or device whatsoever.

(d) *Claim for unpaid wages.* Any person who believes he has not been paid in accordance with this section may file a wage claim with the Area Office against the producer on whose farm the work was performed. Detailed instructions and wage claim forms may be obtained by writing to the Caribbean Area Agricultural Stabilization and Conservation Office, Santurce, Puerto Rico. Such claim must be filed within two years from the date the work with respect to which the claim is made was performed. Upon receipt of a wage claim the Area Office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The Area Office shall make such investigation as it deems necessary and shall notify the producer and worker in writing of its recommendations for settlement of the claim. If the recommendation of the Area Office is not acceptable, either party may file an appeal with the Director of the Sugar Division, Commodity Stabilization Service, U.S. Department of Agriculture, Washington 25, D.C. All such appeals shall be filed within 15 days after receipt of the recommended settlement from the Area Office, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Director of the Sugar Division, his decision shall be binding on all parties insofar as payment under the act is concerned.

STATEMENT OF BASES AND CONSIDERATIONS

(a) *General.* The foregoing determination establishes the minimum wage rates to be paid for work performed by persons employed on the farm in the production, cultivation, or harvesting of sugarcane during the calendar year 1961, as one of the conditions with which producers must comply to be eligible for payments under the act.

(b) *Requirements of the act and standards employed.* Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane with respect to which an application for payment is made shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing; and in making such determinations the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and by-products, income from sugarcane, and cost of production),

and the differences in conditions among the various producing areas.

(c) *1961 wage determination.* This determination increases the minimum wage rates for chemical sprayers 12 cents per hour and for operators of mechanical loaders, operators of tractors and trucks, and all other workers 10 cents per hour over the rates established by the 1960 determination; and specifies that workers are to receive overtime pay for work in excess of 40 hours per week instead of in excess of 44 hours per week as provided in the 1960 determination. Other provisions of the 1960 determination continue unchanged.

A public hearing was held in Christiansted, St. Croix, Virgin Islands, on October 18, 1960, at which interested persons were afforded the opportunity to testify with respect to fair and reasonable wage rates for the calendar year 1961. A representative of the Virgin Islands Corporation, which is owned by the Federal Government and is the largest producer of sugarcane in the Virgin Islands, presented as an exhibit Act No. 627 of the Third Legislature of the Virgin Islands of the United States, approved June 21, 1960. This Act establishes a minimum wage of 50 cents per hour for agricultural workers in the Virgin Islands. The Act also provides for overtime pay at the rate of one and one-half times the applicable rate for work in excess of 40 hours per week. The witness stated that Vicorp had already adopted the minimum wage of 50 cents per hour as provided in Act No. 627 and recommended that such rate be established in the 1961 wage determination. He further stated that wages paid to higher skilled workers also had been increased in about the same proportion as the increase in the minimum wage. The witness objected, however, to establishing a 40 hour work week, contending that overtime payments for work in excess of 40 hours would add substantially to the cost of producing cane. He pointed out that the Board of Directors of Vicorp had requested the Governor of the Virgin Islands to submit to the Legislature a revision of the law to permit a work week of 44 hours. He recommended that other provisions of the determination continue unchanged and stated that the Corporation imports large numbers of British West Indian workers for sugarcane work because the shortage of labor in the Virgin Islands continues to be a serious problem. In a letter to the Department subsequent to the hearing, the witness recommended minimum rates of 75 cents per hour for operators of mechanical loaders, 60 cents per hour for operators of trucks and tractors, and 55 cents per hour for chemical sprayers.

Two witnesses representing producers did not indicate any opposition to the 50-cent minimum hourly rate prescribed by local law but did object to the adoption of a 40-hour work week. One of the witnesses pointed out that the 40-hour work week imposes a hardship on independent growers because many of their

workers are imported and are given free housing, and with a shorter work week more workers and more housing would be needed.

Consideration has been given to the recommendations made at the hearing, to the economic position of the Virgin Islands Corporation and of independent growers, and to other pertinent factors.

The returns, costs, and profits of the sugarcane producing operations of the Corporation and of independent producers have been obtained by field study for recent years and recast in terms of prospective price and production conditions for the 1961 crop. Analysis of these data show that under favorable weather conditions the production of sugarcane is profitable, but that substantial losses are incurred in the years when the crop is subject to drought. Moisture conditions during 1960 were favorable and it is expected that the 1961 crop will be profitable.

The wage provisions of the Sugar Act require, as a condition for payment, that producers shall have paid workers in full for all work performed and shall have been paid at rates not less than those established by the Secretary. This requirement of the Sugar Act for payment in full is interpreted to mean that where the producer and the worker agree upon wages higher than the minimums established by the Secretary, or where local laws require the producer to pay wages at rates higher than the minimums established, the producer must pay such higher rates to comply with the wage provisions of the Act. The Department has been informed that the Virgin Islands Corporation, being a corporation wholly owned by the United States, need not conform to the territorial minimum wage law. However, all other producers are subject to the wage provisions as enacted by the Virgin Islands Legislature and thus cannot agree to pay workers less than the minimum rates established therein. The Corporation recommended the adoption of the local law insofar as the minimum rate of 50 cents per hour is concerned. Although the Corporation did not recommend the adoption of the overtime provisions of the local law, it is believed that the wage requirements which must be met as a condition for Sugar Act payments should be applied uniformly to all producers.

In recognition of the foregoing factors, the rates established in this wage determination are deemed to be fair and reasonable.

Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. Sup. 1153. Interprets or applies sec. 301, 61 Stat. 929, as amended; 7 U.S.C. Sup. 1131)

Issued this 30TH day of August 1961.

ORVILLE L. FREEMAN,
Secretary of Agriculture.

[F.R. Doc. 61-8454; Filed, Sept. 1, 1961; 8:52 a.m.]

Chapter IX—Agricultural Marketing Service and Agricultural Stabilization and Conservation Service (Marketing Agreements and Orders), Department of Agriculture

[Valencia Orange Reg. 243]

PART 922—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 922.543 Valencia Orange Regulation 243.

(a) *Findings.* (1) Pursuant to the marketing agreement and Order No. 22, as amended (7 CFR Part 922), 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 marketing agreement and order, as amended, 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. 1001-1011) 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 August 31, 1961.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., September 3, 1961, and ending at 12:01 a.m., P.s.t., September 10, 1961, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
- (ii) District 2: 600,000 cartons;
- (iii) District 3: Unlimited movement.

(2) All Valencia oranges handled during the period specified in this section are subject also to all applicable size restrictions which are in effect pursuant to this part during such period.

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

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

Dated: September 1, 1961.

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

[F.R. Doc. 61-8511; Filed, Sept. 1, 1961; 11:19 a.m.]

[Lemon Reg. 915]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 953.1022 Lemon Regulation 915.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, 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 recommendation and information submitted by the Lemon 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 lemons 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. 1001-1011) 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 lemons and the need for regulations; 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 lemons; 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 August 29, 1961.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., September 3, 1961, and ending at 12:01 a.m., P.s.t., September 10, 1961, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
- (ii) District 2: 246,450 cartons;
- (iii) District 3: 18,600 cartons.

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

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

Dated: August 31, 1961.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 61-8469; Filed, Sept. 1, 1961; 8:53 a.m.]

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Miscellaneous Amendments

Notice was published in the July 26, 1961, issue of the FEDERAL REGISTER (26 F.R. 6651) that the Department had under consideration certain proposed actions with respect to various subparts (i.e., amendment of Subpart—Administrative Rules and Procedures, and of Subpart—Pack Specifications as to Size), operative pursuant to Marketing Agreement No. 110, as amended, and Order No. 93, as amended (7 CFR Part 993; 26 F.R. 475), hereinafter referred to collectively as the "order", regulating the handling of dried prunes produced in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674). The amendments were proposed by the Prune Administrative Committee, hereinafter

referred to as the "committee", the administrative agency for the operation of the order.

In said notice, interested persons were afforded the opportunity to submit written data, views, or arguments with respect to the proposals. Comments were filed by the committee within the time limit specified in the notice.

After consideration of all relevant matters presented, including the proposals and comments submitted by the committee, and other information applicable thereto, it is concluded that the amendment of these subparts, as herein-after set forth, would tend to effectuate the declared policy of the act.

Therefore, it is hereby ordered, That:

1. The Subpart—Administrative Rules and Procedures and the provisions thereof (§§ 993.101 to 993.176, inclusive) are revised to read as follows:

Subpart—Administrative Rules and Regulations

DEFINITIONS

Sec.	
993.101	Order.
993.102	Committee.
993.103	Terms in the order.
993.104	Lot.
993.105	Size count.
993.106	In-line inspection.
993.107	Floor inspection.
993.108	Non-human consumption outlet.

PRUNE ADMINISTRATIVE COMMITTEE

993.128 Nominations for membership.

GRADE AND SIZE REGULATIONS

993.149 Receiving of prunes by handlers.
993.150 Disposition of prunes by handlers.

REPORTS AND BOOKS AND OTHER RECORDS

993.172 Reports of holdings, receipts, sales, uses, and shipments.
993.173 Reports of accounting.
993.174 Other reports.
993.175 Records.

AUTHORITY: §§ 993.101 to 993.175 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

DEFINITIONS

§ 993.101 Order.

"Order" means Marketing Agreement No. 110, as amended, and Order No. 93, as amended (7 CFR Part 993; 26 F.R. 475), regulating the handling of dried prunes produced in California, or as they may be further amended hereafter.

§ 993.102 Committee.

"Committee" means the Prune Administrative Committee established pursuant to § 993.24.

§ 993.103 Terms in the order.

Terms defined in the order shall have the same meaning when used in this subpart.

§ 993.104 Lot.

(a) "Lot" for the purposes of § 993.49 and § 993.149 means any quantity of prunes delivered by one producer or one dehydrator to a handler on which inspection is requested: *Provided*, That a lot shall be limited to (1) the prunes contained in not more than 30 "ton box" containers or (2), if in other containers, not more than 60,000 pounds of prunes. If the prunes in any containers are

markedly inferior in quality and condition to other prunes in the proffered lot, the containers shall be segregated into lots of reasonable uniform quality.

(b) "Lot" for the purposes of § 993.50 and § 993.150 means:

(1) With respect to in-line inspection either (i) the aggregate quantity of prunes of the same size, other than those rejected by inspection, processed in any continuous production of one calendar day and packed during such day in one size and style of container or (ii) the aggregate quantity of prunes of the same size, other than those rejected by inspection, so processed and held in packing containers for later packaging.

(2) With respect to floor inspection either (i) prunes not previously inspected in-line, of the same size, in like containers, bearing the same identification (e.g., brand) if in consumer packages, and offered for inspection as a lot; or (ii) prunes previously inspected in-line but rejected as failing to meet requirements, of the same size, in like containers, processed in any continuous production of one calendar day, and offered for inspection as a new lot.

§ 993.105 Size count.

"Size count" means the count or number of prunes per pound.

§ 993.106 In-line inspection.

"In-line inspection" means inspection of prunes where samples are drawn from a flow of prunes prior to packaging.

§ 993.107 Floor inspection.

"Floor inspection" means inspection of prunes where samples are drawn from packaged prunes or from unpackaged prunes that are held in packing containers.

§ 993.108 Non-human consumption outlet.

"Non-human consumption outlet" means any livestock feeder or manufacturer of inedible syrup, industrial alcohol, animal feed, or other product for non-human use, who has established, any prunes or prune waste received for a non-human use will be used only within such outlet.

PRUNE ADMINISTRATIVE COMMITTEE

§ 993.128 Nominations for membership.

(a) *Districts.* [Reserved]

(b) *Voting procedures*—(1) *Independent producers.* Prior to March 1 of each election year, the committee shall cause a meeting to be held, in each of the election districts established pursuant to § 993.28(a) for the purpose of obtaining names of proposed candidates for nomination to the Secretary for selection as members and alternate members for the respective districts. Each such candidate must be a producer in the district for which he is proposed. Prior to March 15 of that election year, the committee shall prepare for each district and mail to each independent producer of record in such district a ballot as prescribed in said § 993.28(a). Each voter shall be entitled to cast only one vote for a member nominee and only one vote for an alternate member nominee in a district

in which he is a producer, and no voter shall vote for candidates in more than one district. In case he is a producer in more than one district, he shall elect in which of such districts he will vote and notify the committee as to his choice. In order to be counted, such a mail ballot must be executed and returned to the committee postmarked not later than the following March 31. One nominee for member and one nominee for alternate member for each district shall be submitted to the Secretary by the committee on the basis of those receiving the plurality of the mail ballots cast for the respective positions in the particular district. Returns shall be considered in the light of the voting by each district separately.

(2) *Independent handler nominees.*

(i) Prior to March 15 each election year, the committee shall notify each independent handler of record of the group of independent handlers in which he has been classified pursuant to the provisions of § 993.28(c) and of the number of independent handler positions on the committee for the ensuing term of office pursuant to the provisions of § 993.24 (b) and (c). Prior to April 1 of each election year, each of the two independent handlers classified in the group specified in § 993.28(c)(1) shall notify the committee in writing of his nominee for member and nominee for alternate member as prescribed therein.

(ii) In any election year in which four member positions and four alternate member positions are assigned to independent handlers for the ensuing term of office, the committee shall, prior to April 1 of such year, cause to be held a meeting of the three independent handlers classified in the group specified in § 993.28(c)(2) and a separate meeting of all other independent handlers classified in the group specified in § 993.28(c)(3). Each group at its meeting shall, from among that group, elect one member nominee and one alternate member nominee by plurality vote. Each handler present at the meeting of his group shall be entitled to one vote for a candidate for each position assigned to that group.

(iii) In any election year in which only three member positions and three alternate member positions are assigned to independent handlers for the ensuing term of office, the committee shall, prior to April 1 thereof, cause to be held a meeting of all independent handlers except those classified in the group specified in § 993.28(c)(1). At such meeting one member nominee and one alternate member nominee shall be elected in accordance with the applicable provisions of § 993.28(c).

GRADE AND SIZE REGULATIONS

§ 993.149 Receiving of prunes by handlers.

(a) *Inspection stations.* Prunes shall be inspected only at an inspection station which shall be any plant of a handler, and any other place where prunes are normally and usually received in any considerable volume, and at which there are reasonably adequate facilities for weighing, sampling, and receiving prunes.

(b) *Incoming inspection*—(1) *General*. Upon any producer or dehydrator delivering prunes to a handler, the handler shall issue to the inspection service an identification tag showing the name and address of such producer or dehydrator, the date of delivery, the county of production, the number and type of containers, the approximate net weight of the prunes, the place where the prunes are to be inspected, and any other information necessary to identify such prunes to the satisfaction of the inspector and the committee. For each delivery of such prunes, the handler shall issue to the producer or dehydrator a door receipt or weight certificate showing the name and address of the producer or dehydrator, the weight of the delivery, and any other information necessary to identify the delivery. Such information shall be available to the inspector and the committee. Prunes so delivered to a handler shall not be considered as received prior to the time they have been inspected. Pending inspection the handler shall maintain the identity of such prunes with their corresponding door receipt or weight certificate. Each lot shall be separately inspected. Each inspection certificate shall be limited to the prunes in one lot and shall be based on their net weight. The handler shall supply any necessary information together with any assistance needed by the inspector in drawing samples including the dumping of containers. Handlers shall require inspection of prunes as soon as practicable following delivery. After inspection, each lot of prunes shall be promptly received by the handler or returned to the producer or dehydrator. When a lot of prunes is inspected at other than a handler's plant, the handler shall require the inspector to forward, with such a lot to the handler, the handler's copies of the certificate.

(2) *Certification*. Following inspection of a lot not returned to the producer or dehydrator the handler shall require the inspector to issue, in quintuplicate, a signed certificate containing the following information: (i) The date and place of inspection; (ii) the name and address of the producer or dehydrator, the handler, and the inspection service; (iii) the variety of the prunes, the county in which such prunes were produced, the number and type of the containers thereof, and the net weight of the prunes as shown on the applicable door receipt or weight certificate, together with the number of such receipt or certificate; (iv) whether the prunes are standard, substandard, or substandard for non-human use only as prescribed in paragraph (d)(1) of this section; (v) the inspector's computations of the percentage of each group or combination of groups of defects for which a maximum tolerance is in effect; and (vi) if substandard, the average size count of all off-grade prunes (those defective pursuant to § 993.97) in the lot, and the percentage by weight and the average size count of those off-grade prunes with defects of mold, imbedded dirt, insect infestation, and decay, and the percentage by weight, of prunes with such defects, necessary to be removed in

order for the balance of the lot to be within the tolerance for such defects.

(c) *Conditional provisions*—(1) *Wet or slack-dry prunes*. Any prunes delivered to a handler by a producer or dehydrator which an inspector determines have not been properly dried and cured in original natural condition, or which show evidence of the addition thereto of water, may be held by the handler for the account of the producer or dehydrator for conditioning by further drying or dehydration: *Provided*, That such prunes shall be identified and kept separate and apart from any other prunes in the handler's possession until resubmitted for inspection and certificated as properly dried and cured, or returned to the producer or dehydrator. The certificate shall show, in addition to other inspection requirements, that the conditioning was performed and indicate the net weight after conditioning.

(2) *Prunes with active insect infestation*. Any prunes delivered to a handler which an inspector determines are not free from active insect infestation, may be returned to the producer or dehydrator or may be held by the handler for the account of the producer or dehydrator for conditioning by fumigation: *Provided*, That such prunes shall be identified and kept separate and apart from any other prunes in the handler's possession until resubmitted for inspection and certificated to show, in addition to other inspection requirements, performance of fumigation and freedom from active infestation.

(3) *High moisture content prunes*. The delivery of any high moisture content prunes to a handler by a producer or dehydrator shall be reported promptly by the handler to the inspection service. The inspection service shall be requested to submit a report to the committee of each such delivery which shall contain the following information: (i) The date and place of the delivery; (ii) the name and address of the producer or dehydrator, the handler, and the inspection service; and (iii) the variety of the high moisture content prunes, the county in which they were produced, and their net weight as shown on the door receipt or weight certificate, together with the number of such receipt or certificate. Any handler who, subsequent to delivery to him of high moisture content prunes, elects to dry or dehydrate them or any portion thereof to a point where they are capable of being received by such handler shall, prior to proceeding with such drying or dehydration, notify an inspector of the inspection service of his election, and the same procedure shall apply as set forth in subparagraph (1) of this paragraph. For each day on which a handler processes and packages high moisture content prunes, he shall furnish promptly to the inspector a signed statement and one copy showing the handler's name and address and the net weight of the total tonnage of high moisture content prunes processed and packaged by him on that day. The handler shall furnish promptly to the inspector two copies of the shipping or disposition order or other documents which shall show the date of each shipment or

disposition, the applicable reference number thereof, and an adequate description of the shipment or disposition. One copy of each document so furnished shall be required to be forwarded to the committee. Upon request of the committee a handler shall, within ten days thereafter, file with the committee a signed report on Form PAC 3.1 "Report of High Moisture Content Prunes" which shall contain the following information: (i) The date and the name and address of the handler; (ii) the total tonnage of high moisture content prunes delivered to the handler during the crop year to the date of the report; (iii) the total tonnage of high moisture content prunes shipped or otherwise disposed of by the handler during such period; (iv) the total tonnage of high moisture content prunes delivered to the handler during such period which were dried or dehydrated and received as prunes by the handler; and (v) the total tonnage of high moisture content prunes in the handler's possession on the date of the report.

(4) *Return of prunes to producers and dehydrators*. Any lot of prunes delivered to a handler by a producer or dehydrator may be returned to the producer or dehydrator prior to an inspection thereof. Any lot of prunes so delivered whose identity has been maintained may be so returned following an inspection thereof, except (i) a lot described in paragraph (d)(1) of this section, and (ii) prunes which, after such inspection, have been size graded or sorted by the handler, resulting in a segregation of defects. Prunes which have been sorted for the producer or dehydrator, the identity of which have been maintained to the satisfaction of the inspector and the committee, may be resubmitted for inspection in not more than three new lots, equal in weight to the original lot, and the applicable inspections shall supersede the original inspection.

(d) *Prunes for non-human consumption only*—(1) *Maximum percentage defective*. The maximum percentage of prunes with defects of mold, imbedded dirt, insect infestation, and decay shall be 50 percent and any lot with such prunes in excess of such percentage shall be deemed to have been received by the handler and shall be disposed of by him in its entirety in non-human consumption outlets. Pending disposition, such lot shall be held alone, or with other like lots of prunes, separate and apart from all other prunes held by the handler, and with identity maintained to the satisfaction of the inspector and the committee.

(2) *Regulation on substandard prunes accumulated by a handler pursuant to § 993.49(c)*. To satisfy the obligation imposed by § 993.49(c) to dispose of excess defective prunes, other than those of subparagraph (1) of this paragraph, each handler shall dispose of, in non-human consumption outlets, a weight of such prunes equal to the excess in substandard lots received and such prunes shall be prunes with defects of mold, imbedded dirt, insect infestation, or decay, as of their receipt by the handler, and shall not exceed by more than 20 prunes per pound the weighted aver-

age size count of defective prunes in lots with an excess of such prunes. The inspection certificate applicable to the quantity of prunes in which such defective prunes are included for disposition shall show in addition to items set forth in § 993.150(e)(3), the percentage by weight of such defective prunes, their average size count, and whether they are capable of being stored unpacked without further material deterioration or spoilage. If they are storable and if an appropriate size count, the creditable weight shall be that resulting from the application of such percentage to the total weight of such quantity of prunes. If they are not storable, the creditable weight of defective prunes shall be reduced, and their average size count shall be increased, by the percentage of moisture determined by the inspector as necessary to be removed to render them capable of being stored.

(3) *Disposition.* Prunes accumulated by a handler pursuant to subparagraphs (1) and (2) of this paragraph shall be disposed of in non-human consumption outlets during the crop year in which the prunes establishing such obligation were received from producers and dehydrators.

§ 993.150 Disposition of prunes by handlers.

(a) *Inspection stations.* An inspection station shall be any plant of a handler, and any other place where he handles prunes.

(b) *Outgoing inspection.* Except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of natural condition prunes or of processed prunes unless he has, prior to such shipment or final disposition, had them inspected and obtained a certificate showing that such prunes meet the effective minimum standards. Such inspection shall be made during that portion of the final preparation of the prunes for shipment or other final disposition as will permit proper sampling, whether in-line or floor inspection, and no handler shall perform such final preparation unless an inspector is present. The handler shall furnish promptly to the inspector a copy of the shipping or disposition order or other documents, which shall show the date of each shipment or disposition, the applicable reference number thereof, and an adequate description of the shipment or disposition. For the prunes inspected each day which meet the applicable minimum grade and size requirements for standard prunes, or standard processed prunes, the handler shall cause the inspector to issue in triplicate a signed certificate containing the following information: (1) The date and place of inspection; (2) the name and address of the handler and of the inspection service; (3) the number and size of packages or the net weight of prunes; (4) the number of the worksheet or worksheets on which the inspector's computations and results of tests are recorded; and (5) a statement that the prunes meet the effective minimum standards for standard prunes, or standard processed prunes, as the case may be.

(c) *Interhandler transfers.* A handler may transfer prunes other than those

regulated pursuant to § 993.149(d) (1) and (2), to a plant of another handler within the area without inspection: *Provided*, That he shall submit to the committee, not later than ten days (exclusive of Saturdays, Sundays, and legal holidays) following each such transfer, a signed report on Form PAC 1.1 "Interhandler Transfer Report," containing the following information: (1) The date of the transfer; (2) the names and addresses of the handlers and the locations of the plants; (3) the number of containers, and the total net weight of prunes; and (4) the manifest or billing number. Two copies of such report shall be forwarded to the receiving handler, on one of which the receiving handler shall certify to the receipt by him of such prunes and submit it to the committee within ten days (exclusive of Saturdays, Sundays, and legal holidays) following receipt of the prunes. Any prunes so transferred shall be submitted to inspection by the receiving handler prior to shipment or other final disposition by him.

(d) *Tolerances for non-French prunes.* Any lot of standard prunes or standard processed prunes containing more than two percent by weight of non-French prunes shall be disposed of only in prune product outlets as prescribed in § 993.50 (c) unless the non-French prunes therein have an average count of 50 or less per pound (or 60 or less per pound if 90 percent or more by weight of such non-French prunes are of the Robe de Sargent variety) and unless in a 100 ounce sample of the lot, the count per pound of 10 ounces of the smallest prunes in the sample does not vary from the count per pound of 10 ounces of the largest prunes in the sample by more than 35 points. A lot shall be deemed to exceed the two percent tolerance for non-French prunes whenever an inspection shows such prunes exceed two percent in any four consecutive sampling units of two tons or less or, if less than four such units are sampled, in such lesser number of units.

(e) *Prunes which fail to meet minimum standards—(1) Committee's approval of disposition.* Any defective prunes which may be accumulated by a handler by removing them from standard or sub-standard prunes or any prunes received by a handler which fail to meet the minimum standards and are held for disposition without removal of defective prunes in excess of maximum tolerances can only be used, if within tolerances prescribed in § 993.97 II C(1), (2) and (3), as prune products, or, if such tolerances are exceeded and the live infestation corrected by fumigation, can only be used for non-human consumption or destroyed. In order to insure that such prunes will not be used for non-authorized purposes, any handler, prior to making any shipment or other disposition of such prunes, shall file a written application with the committee for permission to do so and receive the written approval of the committee thereto on Form PAC 2.3 "Permission to Dispose of Substandard Prunes." Such application shall set forth, if for shipment: (i) The name and

address of the consignee; (ii) the quantity of prunes to be shipped, and their then present location; (iii) the use to be made of them; and (iv) if such use is to be by someone other than the buyer, the name and address of such other person. If the use and the name and address of the user are not known, approval by the committee shall be withheld subject to the handler's arranging to have the committee informed as to the ultimate user and use of the prunes. If use is to be made by the handler, the application shall so indicate and set forth all applicable information. An approval shall extend only to the disposition described in the application, and any changes in the details of such disposition shall require the filing of a new application. In addition, the handler shall make available for examination by the committee, at his business office at any time during business hours, copies of all applicable purchase orders, sales contracts, or disposition orders, together with any further information which the committee may deem necessary or desirable to enable it to determine whether such prunes have been or will be actually utilized for the permitted purpose. The committee, in acting on the applications, shall specify the maximum quantity of substandard prunes, if any, for which approval is granted. In the event the committee has cause to believe that such prunes will not be shipped or disposed of in accordance with a handler's application or has cause to believe that the prunes will not be utilized for the permitted purpose, the committee shall disapprove the handler's application and shall notify him of such disapproval and he shall not make the proposed shipment or disposition. The handler shall furnish the committee with a copy of the shipping document on each shipment of prunes to a non-human consumption outlet.

(2) *Out of the area shipments.* Whenever substandard prunes for human consumption are packed in closed containers, and if for shipment outside the area they shall be so packed, each such container shall be clearly marked "For Manufacturing Purposes Only". Whenever substandard prunes restricted to non-human usage are shipped in closed containers, each such container shall be clearly marked "For Non-Human Usage". In each instance, the letters shall be of reasonable prominence and in a conspicuous place on the container.

(3) *Inspection of substandard prunes.* Each handler shall cause substandard prunes, for use in prune products, or to be credited against handler disposition obligations in accordance with § 993.149(d) (1) and (2), to be inspected (prior to disposition or shipment by a handler) by an inspector, and that such inspector issue, in triplicate, a signed clearance certificate (for the preparation of which the handler shall make available to the inspector the necessary data) containing the following information: (i) The date and place of inspection and clearance; (ii) the name and address of the inspection service and of the handler; (iii) the number and kind of packages, the net weight, and the

adequacy of the marking; (iv) the lot number or shipping or disposition order number; (v) the committee's approval number; (vi) the destination; and (vii) except for prunes within § 993.149 (d) (1) and (2), the actual percentage of off-grade prunes of each group, or combination of groups, of defects in excess of the then current tolerances for standard prunes or standard processed prunes.

REPORTS AND BOOKS AND OTHER RECORDS

§ 993.172 Reports of holdings, receipts, sales, uses, and shipments.

(a) *Holdings as of March 31.* Each handler shall, on or before the 15th day of April, file with the committee a signed report of holdings of prunes which have not been inspected or received by him as a handler as of March 31. The report shall show for such prunes the name and address of the producer or dehydrator, the date of each identification tag assigned to such prunes, the numbers and dates of door receipts or weight certificates or any other identifying documents assigned to such prunes, the net weight shown on each, the total net weight of all prunes so held, and the name and address of the handler making the report.

(b) *Receipts by handlers.* Each handler shall file with the committee, for each month, prior to the 10th calendar day of the next succeeding month, a signed report on Form PAC 11.1, "Report of Prunes Received," containing the following information: (1) The date, the name and address of the handler, and the period covered by the report; and (2) the total tonnage received during the month from each of (i) producers and dehydrators, (ii) other handlers, including interhandler transfers, and (iii) sources other than producers, dehydrators and other handlers.

(c) *Sales by handlers.* Each handler shall file with the committee, for each month, prior to the 10th calendar day of the next succeeding month, a signed report on Form PAC 12.1, "Report of Sales," containing the following information: (1) The date, the name and address of the handler, and the period covered by the report; (2) the total tonnage of prunes sold by the handler unshipped at the beginning of the crop year plus sales during the crop year to the last day of the month reported on; (3) the total tonnages sold in domestic outlets, including Federal Government agencies, segregated by uses; (4) the total tonnages sold in export markets, segregated as to countries; and (5) the total tonnage sold to other handlers, including interhandler transfers.

(d) *Shipments by handlers.* Each handler shall file with the committee, for each month, prior to the 10th calendar day of the next succeeding month, a signed report on Form PAC 13.1, "Report of Shipments," containing the following information: (1) The date, the name and address of the handler, and the period covered by the report; (2) the total tonnage of prunes shipped or otherwise disposed of by the handler during the period of the report, segregated as to: (i) Do-

mestic outlets, including Federal Government agencies, (ii) commercial foreign export outlets, and (iii) culls, and (3) the total tonnage shipped to other handlers, including interhandler transfers.

§ 993.173 Reports of accounting.

(a) *Independent handler's reports of accounting.* Within 10 days (exclusive of Saturdays, Sundays and legal holidays) after a handler, other than a non-profit cooperative agricultural marketing association, makes an accounting or settlement with a producer or dehydrator for prunes delivered to him, he shall submit to the committee a copy of the accounting or settlement record, which shall contain the following information: (1) The names and addresses of the producer or dehydrator, any other person having a financial interest in the prunes, and the handler; (2) the date of the accounting or settlement; (3) the contract number if any; (4) an itemized statement listing each lot of prunes in the delivery, showing the date received, receiving point, weight certificate or door receipt number, inspection certificate number, variety, crop year of production, the net weight and the average size count of prunes, if any, shown by the applicable incoming inspection certificate to be set aside for non-human consumption in accordance with § 993.149(d) (1) and (2), and the net weight of prunes received in each lot; and (5) the total net weight of prunes to be set aside for non-human consumption, and the total net weight received.

(b) *Cooperative marketing association's reports of accounting.* Upon written notice by the committee, non-profit cooperative agricultural marketing associations which are handlers shall file with the committee within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter a signed cumulative report of the prunes received from its members and any other producers or dehydrators for whom it performs handling services, which shall contain the following information: (1) The name and address of the association and the date of the report; (2) the aggregate net weight and weighted average size count of prunes required to be shown by the applicable incoming inspection certificates to be set aside for non-human consumption in accordance with § 993.149(d), (1) and (2); and (3) the total net weight of prunes received, itemized by crop years of production.

§ 993.174 Other reports.

(a) *Carryover and marketing policy information.* Upon request of the committee, a handler shall, within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter, file with the committee a signed report on Form PAC 14.1, "Report of Carryover and Marketing Policy Information," containing such of the following items of information as may be requested by the committee: (1) The tonnage of prunes held by the handler, by size and grade, as of the date specified in the committee's request; and (2) the handler's estimate of the tonnage of prunes held by producers and dehy-

drators from who the handler received prunes during the current or preceding crop year, of the tonnage and quality and size of prunes expected to be produced by such producers and dehydrators during the current or following crop year, of current prices being received by producers, dehydrators, and handlers, and of probable market requirements.

§ 993.175 Records.

Each handler shall maintain such records as are necessary to furnish the reports required to be submitted to the including, but not limited to, records of all transactions on prunes received, held and disposed of by him, and he shall retain such records for at least two years after the end of the crop year in which the applicable transaction occurred.

2. The provisions (§§ 993.501 to 993.518, inclusive) of Subpart—Pack Specifications as to Size are revised to read as follows:

Subpart—Pack Specifications As to Size

DEFINITIONS

Sec.	
993.501	Consumer package of prunes.
993.502	Size count.
993.503	Size category.
993.504	In-line inspection.
993.505	Floor inspection.
993.506	Lot.

SPECIFICATIONS AS TO SIZE

993.515	Size categories.
993.516	Tolerances and limitations.

LABELING

993.517	Identification.
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COMPLIANCE

993.518	Compliance.
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AUTHORITY: §§ 993.501 to 993.518 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

DEFINITIONS

§ 993.501 Consumer package of prunes.

"Consumer package of prunes" means "consumer package" as defined in § 993.22.

§ 993.502 Size count.

"Size count" means the count or number of prunes per pound.

§ 993.503 Size category.

"Size category" means each of the size categories listed in § 993.515 and fixes the range or the limits of the various size counts.

§ 993.504 In-line inspection.

"In-line inspection" means inspection of prunes where samples are drawn from a flow of prunes prior to packaging.

§ 993.505 Floor inspection.

"Floor inspection" means inspection of prunes where samples are drawn from packaged prunes or from unpackaged prunes that are held in packing containers for later packaging.

§ 993.506 Lot.

"Lot" for the purposes of this subpart shall have the same meaning as defined in § 993.104(b) of the Subpart—Administrative Rules and Regulations.

SPECIFICATIONS AS TO SIZE

§ 993.515 Size categories.

For the purpose of this part, the pack specifications prescribed for the packing of prunes in consumer packages shall, subject to the limitation prescribed in § 993.516, be according to those commercially recognized size categories as are listed in paragraph (a) of this section by numerical designation or in paragraph (b) of this section by nomenclature designation.

(a) *Numerical designations.* Each of the following is a numerical size category described by the range of the size counts of prunes per pound included in the respective size categories expressed as follows or in an applicable equivalent range expressed in the metric system per 500 grams: 15/20, 15/22, 18/24, 20/30, 25/35, 30/40, 35/45, 40/50, 50/60, 60/70, 70/80, 75/85, 80/90, and 90/100.

(b) *Nomenclature designations.* Each of the following is a nomenclature size category:

- (1) Extra large;
- (2) Large;
- (3) Medium; and
- (4) Small, Breakfast, or Petite.

(c) *Nomenclature designations defined.* As used in paragraph (b) of this section:

(1) "Extra large" means any size count which falls within the range of 36 to 43 prunes, inclusive, per pound;

(2) "Large" means any size count which falls within the range of 43 to 53 prunes, inclusive, per pound;

(3) "Medium" means any size count which falls within the range of 53 to 67 prunes, inclusive, per pound; and

(4) "Small," "Breakfast," or "Petite" means any size count which falls within the range of 67 to 85 prunes, inclusive, per pound.

§ 993.516 Tolerances and limitations.

With respect to in-line inspections and floor inspections, prunes in a particular lot shall, subject to the other applicable requirements of this section, be considered as being according to a particular size category prescribed in § 993.515 if the average size count of the prunes in such lot falls within the range of the size counts specified for such size category, and the count per pound of 10 ounces of the smallest prunes in a sample of 100 ounces varies from the count per pound of 10 ounces of the largest prunes in such sample by no more than 45 points.

LABELING

§ 993.517 Identification.

The size category of the prunes in any lot shall be clearly marked by the handler on each consumer package of such prunes, on the parts or panels of the package or label which are normally presented in retail display, in terms of the applicable numerical or nomenclature designation prescribed in § 993.515, which designation shall not be lacking in prominence and conspicuousness. Any handler may, at his option, clearly mark on such consumer package additional information describing in numerical

terms the average size count, or particular range of size counts, of the prunes in such lot so long as such numerical terms fall within the range of the size counts of the applicable numerical or nomenclature designation and do not tend to be deceptive as to the actual average size count, or range of the size counts, of the prunes in such lot. Descriptive terms other than synonyms of the prescribed nomenclature designation or words of like connotation, describing the style of pack, variety of prune, or other item of commercial significance may also be marked on the consumer package. Prunes in any lot of which the maximum size count is less than 36 shall be clearly marked by the handler in terms of the applicable numerical designation prescribed in § 993.515(a); and the handler may use nomenclature terms descriptive of size other than the nomenclature designations prescribed in § 993.515(b).

COMPLIANCE

§ 993.518 Compliance.

Whenever the season average price to producers for prunes is below the parity level specified in section 2(1) of the act, no handler shall ship consumer packages of prunes unless such prunes are packed and labeled in accordance with the specifications prescribed in this subpart; and whether prices are above or below parity, no handler shall use the nomenclature designations in § 993.515(b) to describe size categories other than those prescribed pursuant to § 993.515(c).

It is hereby found and determined that good cause exists for not postponing the effective date hereof until 30 days after publication in the *FEDERAL REGISTER* (5 U.S.C. 1001-1011) in that: (1) The amendment of the administrative rules and regulations and the pack specifications as to size are designed to achieve effective administration of this part as recently amended (26 F.R. 475), and should be effective for the entire marketing season which began August 1; (2) handlers are now handling dried prunes received during the 1960-61 crop year and are about to receive 1961 crop dried prunes; (3) the proposals, on which the amendments of the various subparts are based, were submitted by the Prune Administrative Committee (on which handlers are represented) and handlers and producers generally have knowledge of the revisions proposed by the committee; (4) the amendments will make certain provisions of the administrative rules and regulations and order less restrictive and also place into effect procedures and tolerances essential to operation of the program; and (5) notice of proposed rule making in connection with this action was published in the *FEDERAL REGISTER* on July 26, 1961 (26 F.R. 6651), the sole person to submit written data, views, or arguments with respect thereto was the Prune Administrative Committee and such have been duly considered.

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

Dated: August 29, 1961, to become effective upon publication in the *FEDERAL REGISTER*.

FLOYD F. HEDLUND,
Director,
Fruit and Vegetable Division.

[F.R. Doc. 61-8425; Filed, Sept. 1, 1961; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 61-FW-75]

PART 608—SPECIAL USE AIRSPACE

Alteration of Restricted Area

The purpose of this amendment to § 608.56 of the regulations of the Administrator is to alter the Fort Sill, Okla., Restricted Area R-5601.

Following an evaluation of its needs for restricted airspace at Fort Sill, Okla., the Department of the Army has advised the Federal Aviation Agency of a need for an adjustment of the dimensions of R-5601. The Army indicated that the size of R-5601 can be reduced by approximately 50 square miles. Although this modification results in an over-all reduction of restricted airspace, the adjustment of the restricted area boundaries entails the inclusion within R-5601 of a small amount of airspace bordering the north-central edge of the present area. This additional area is approximately $\frac{1}{2}$ nautical mile in width extending approximately 12 nautical miles in length and would not affect current aeronautical operations.

Since this amendment reduces a burden on the public, compliance with the notice, public procedure, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary and it may be made effective upon publication.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), the following action is taken:

In § 608.56 (26 F.R. 7200), R-5601 Fort Sill, Okla., is amended to read:

R-5601 Fort Sill, Okla.

Boundaries. Beginning at latitude 34°46'06" N., longitude 98°17'00" W.; to latitude 34°38'15" N., longitude 98°17'00" W.; to latitude 34°38'15" N., longitude 98°45'20" W.; to latitude 34°41'58" N., longitude 98°45'20" W.; to latitude 34°41'58" N., longitude 98°39'43" W.; to latitude 34°43'30" N., longitude 98°35'39" W.; to latitude 34°43'30" N., longitude 98°21'20" W.; to latitude 34°43'45" N., longitude 98°21'00" W.; to latitude 34°46'06" N., longitude 98°21'00" W.; to the point of beginning.

Designated altitudes. Surface to 65,000 feet MSL.

Time of Designation. Continuous.
Using Agency. Commanding General, Fort Sill, Okla.

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

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on August 28, 1961.

LEE E. WARREN,
Acting Director, Air Traffic Service.

[F.R. Doc. 61-8410; Filed, Sept. 1, 1961;
8:45 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 55456]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Temporary Reduction in Duty-Free Allowance for Returning Residents

Correction

In F.R. Doc. 61-8230, appearing at page 8070 of the issue for Tuesday, August 29, 1961, the following corrections are made:

1. The heading set forth below the "Part" heading should read as set forth above.

2. In the first paragraph, the phrases reading "temporary reduction in duty, free allowance for returning residents" should read "temporary reduction in duty-free allowance for returning residents".

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Adminis- tration, Department of Health, Edu- cation, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

POLYSORBATE 80

The Commissioner of Food and Drugs, having evaluated the data submitted in petitions filed by U.S. Vitamin and Pharmaceutical Corporation, 250 East 43d Street, New York 17, New York, and Wyeth Laboratories, Inc., Box 8299, Philadelphia 1, Pennsylvania, and other relevant material, has concluded that the following regulation should issue in conformance with section 409 of the Federal Food, Drug, and Cosmetic Act, with respect to the food additive polysorbate 80 as a solubilizing and dispersing agent of fat-soluble vitamins in vitamin and vitamin-mineral preparations. Therefore, pursuant to the provisions of the act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), §121.1009(c) of the food additive regulations (21 CFR 121.1009 (26 F.R. 4739)) is amended by adding thereto a new subparagraph (4), reading as follows:

§ 121.1009 Polysorbate 80 (polyoxyethylene (20) sorbitan monooleate).

(c) * * *

(4) As a solubilizing and dispersing agent for fat-soluble vitamins in vitamin and vitamin-mineral preparations, whereby the maximum intake of additive from the recommended daily dose of vitamins does not exceed 300 milligrams; except that in vitamin A preparations containing more than 30,000 units per dose, the maximum intake of the additive shall not exceed 500 milligrams per day.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: August 28, 1961.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 61-8431; Filed, Sept. 1, 1961;
8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

BHT AND BHA

The Commissioner of Food and Drugs having evaluated the data submitted in a petition filed by Pillsbury Company, 608 Second Avenue South, Minneapolis 2, Minnesota, and other relevant material, has concluded that the following amendments to the food additive regulations should issue with respect to BHT and BHA as antioxidants in potato flakes. Therefore, pursuant to the provisions of the act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), §§ 121.1034 and 121.1035 (21 CFR 121.1034, 121.1035) (26 F.R. 1984, 3247, 5677, 7127) of the food additive regulations are amended as set forth below:

1. Section 121.1034(b) is amended by adding thereto a new subparagraph (3), reading as follows:

§ 121.1034 BHT (butylated hydroxytoluene) as an antioxidant.

(b) * * *

(3) In potato flakes, alone or in combination with BHA (butylated hydroxyanisole), whereby the maximum amount of the additives, alone or in combination, does not exceed 20 parts per million (0.002 percent) of the weight of the potato flakes.

2. Section 121.1035(b) is amended by adding thereto a new subparagraph (5), reading as follows:

§ 121.1035 BHA (butylated hydroxyanisole) as an antioxidant.

(b) * * *

(5) In potato flakes, alone or in combination with BHT (butylated hydroxytoluene), whereby the maximum amount of the additives, alone or in combination, does not exceed 20 parts per million (0.002 percent) of the weight of the potato flakes.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: August 28, 1961.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 61-8432; Filed, Sept. 1, 1961;
8:48 a.m.]

SUBCHAPTER C—DRUGS

PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTI- BIOTIC AND ANTIBIOTIC-CON- TAINING DRUGS

Animal Feed Containing Antibiotic Drugs

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507(c), 59 Stat. 463; 21 U.S.C. 357(c)), and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the general regulations for the certification of antibiotic and antibiotic-containing drugs

(21 CFR 146.26; 26 F.R. 5371) are amended as follows:

In §146.26 *Animal feed containing penicillin* * * *, paragraph (b)(31) is amended by changing the words "for the first week of lactation." in the first sentence to read "until pigs are weaned."

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it relaxes existing requirements and since it would be contrary to public interest to delay providing for the amendment incorporated in this order. I further find that animal feed containing antibiotic drugs and conforming with the conditions prescribed in this order need not comply with the requirements of sections 502(1) and 507 of the Federal Food, Drug, and Cosmetic Act in order to insure their safety and efficacy.

Effective date. This order shall become effective 30 days from the date of its publication in the *FEDERAL REGISTER*.

(Sec. 507(c), 59 Stat. 463; 21 U.S.C. 357(c))

Dated: August 28, 1961.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 61-8436; Filed, Sept. 1, 1961;
8:49 a.m.]

Title 22—FOREIGN RELATIONS

Chapter II—International Cooperation Administration, Department of State

PART 204—GUARANTIES UNDER THE MUTUAL SECURITY ACT OF 1954

Miscellaneous Amendments

Part 204, Chapter II, Title 22, of the Code of Federal Regulations is hereby amended by striking therefrom § 204.4 and redesignating §§ 204.5, 204.6 and 204.7 as §§ 204.4, 204.5 and 204.6, respectively.

This amendment shall become effective September 1, 1961.

D. A. FITZGERALD,
Deputy Director for Operations.

AUGUST 25, 1961.

[F.R. Doc. 61-8413; Filed, Sept. 1, 1961;
8:46 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER A—REGULATIONS

PART 522—EMPLOYMENT OF LEARNERS

Miscellaneous Amendments

I. On August 12, 1961, notice of proposed amendments to 29 CFR Part 522 was published in the *FEDERAL REGISTER* (26 F.R. 7355). After consideration of all such relevant matter presented by interested persons regarding the proposed amendments, the proposals are hereby adopted, subject to the changes herein-

after set forth. In the changes made in § 522.25, the robes and rainwear divisions of the apparel industry have been excluded from the general denial policy. A public hearing will be held in the next few months on the issue of whether the general denial policy should be extended to include the robes and rainwear divisions.

The amendments shall become effective on September 3, 1961. Good cause is hereby found for furnishing no further delay in effective date. The amendments adapt the policies expressed in 25 CFR Part 522 to the changes made by the Fair Labor Standards Amendments of 1961 (Pub. Law 87-30) which also become effective on that date.

The changes in the proposal are set out below.

A. Paragraphs (a) and (c) of § 522.23 are revised.

B. Section 522.25 is revised.

The regulations as amended are set forth below:

1. Paragraphs (a) and (c) of § 522.23, dealing with the apparel industry, are amended to substitute "three years" for the "two years" in connection with the previous experience of workers to be considered. As amended § 522.23 reads as follows:

§ 522.23 Learner occupations and learning periods.

(a) Sewing machine operating, final pressing, hand-sewing, and finishing operations involving hand-sewing, maximum learning period of 480 hours of any of these occupations; final inspection of assembled garments, all other pressing, and all other machine operating (except the "cutting room" operations of knife or die cutting, spreading and marking, wherever performed in the plant), a maximum learning period of 160 hours; but not more than 320-hour learning period in such occupations where a maximum of 480 hours is authorized, if, within the previous three years, the worker has had 160 hours or more experience in another of these occupations in any division of the apparel industry as defined in § 522.21.

(c) If, within the previous three years, a worker has been employed in any division of the apparel industry, or in the manufacturing of men's and boys' underwear from any woven fabric in establishments in the knitted wear industry, in an authorized learner occupation for less than the maximum learning period authorized for that occupation, the number of hours of previous employment shall be deducted from the learning period applicable to that occupation.

2. Paragraph (a) (1) of § 522.24, dealing with the apparel industry, is amended, paragraph (a) (2) thereof deleted, and paragraph (a) (3) renumbered and amended, and paragraphs (b) and (c) are amended to increase the special minimum rates by fifteen cents per hour for the women's apparel division of the apparel industry and by twenty cents per hour for the divisions of the apparel industry, defined in paragraphs (b) and (c) of § 522.21, so as to read as follows:

§ 522.24 Special minimum rates.

(a) * * *

(1) Not less than \$1.00 per hour for the first 320 hours and not less than \$1.05 per hour for the next 160 hours.

(2) An experienced worker in any one of the occupations shown in § 522.23(a) for which a 480-hour learning period is authorized, who is being retrained in any other occupation shown in that paragraph having such a 480-hour maximum period, shall be paid at wage rates not less than \$1.00 per hour for the first 160 hours and not less than \$1.05 per hour for the next 160 hours.

(b) A learner employed in the occupation of final inspection of assembled garments shall be paid, during the authorized 160-hour learning period, not less than \$1.05 per hour.

(c) A learner employed in any occupation, other than final inspection of assembled garments, for which a 160-hour learning period is authorized in § 522.23(a) shall be paid not less than \$1.00 per hour.

3. Paragraphs (b) and (c) of § 522.34, dealing with the knitted wear industry, are amended to substitute "three years" for "two years" in connection with the previous experience of workers to be considered. As amended, paragraphs (b) and (c) of § 522.34 read as follows:

§ 522.34 Learning periods.

(b) If a worker who is being trained in any authorized learner occupation has been employed in that same occupation in the knitted wear industry within the previous three years, the hours of such previous employment shall be deducted from the authorized learning period.

(c) If a worker is employed in the manufacture of men's and boys' underwear from any woven fabric in the occupations of machine stitcher or presser, all hours of employment within the previous three years as a machine stitcher or presser in the apparel industry shall be deducted from the authorized learning period in the event such worker is subsequently employed in the same occupation.

4. Paragraph (a) of § 522.35 is amended to increase the 90-cent special minimum rate prescribed therein to \$1.05, and reads as follows:

§ 522.35 Special minimum rates.

(a) The special minimum rate which may be authorized in special certificates issued in the knitted wear industry shall be not less than \$1.05 per hour.

5. Paragraphs (a) and (d) of § 522.43, dealing with the hosiery industry, are amended to increase by 15 cents, the special minimum rates prescribed therein, and to adjust the authorized learning periods. The codification note following § 522.43(d) is deleted. The revised paragraphs (a) and (d) read as follows:

§ 522.43 Learner occupations, learning periods and special minimum rates.

(a) A person who has had no previous experience in any of the following occupations in the hosiery industry may be employed as a learner in any one of

the occupations for the maximum number of hours and at the special rates set out in subparagraphs (1) through (9) of this paragraph.

(1) In the seamless branch, knitting (transfer top only) and looping, for 960 hours, at not less than \$1.00 per hour for the first 480 hours and \$1.07½ for the remaining 480 hours.

(2) In the seamless branch, pairing (women's nylon) and mending (women's nylon), for 720 hours, at not less than \$1.00 per hour for the first 360 hours and \$1.07½ for the remaining 360 hours.

(3) In the seamless branch, topping, welting, and mending (other than women's nylon), for 480 hours, at not less than \$1.00 per hour.

(4) In the seamless branch, boarding (women's nylon), folding (women's nylon and rayon) and pairing (other than women's nylon), for 360 hours, at not less than \$1.00 per hour.

(5) In the seamless branch, knitting (except transfer top), seaming, examining and inspecting, folding (other than women's nylon and rayon), and boarding (other than women's nylon), for 240 hours, at not less than \$1.00 per hour.

(6) In the full-fashioned branch, seaming (leg and foot), for 960 hours, at not less than \$1.05 for the first 480 hours and \$1.12½ for the remaining 480 hours.

(7) In the full-fashioned branch, pairing and mending, for 720 hours, at not less than \$1.05 for the first 360 hours, and \$1.12½ for the remaining 360 hours.

(8) In the full-fashioned branch, boarding and folding, for 360 hours, at not less than \$1.05 per hour.

(9) In the full-fashioned branch, examining and inspecting, and seaming (sewing—other than leg and foot), for 240 hours, at not less than \$1.05 per hour.

(10) For purposes of subparagraphs (2) and (7) of this paragraph, the occupation of mending is defined as the process of hand-mending hosiery, either in the greige or finished condition, excluding snagging or scratching performed as a full-time and continuous process, and excluding the operation of various types of mending machines, such as Vitos, Vanitas, Stelos or Marvel, except where the operation of such machines is incidental to the hand-mending operation and the use of such machinery is an adjunct to the hand-mending process. For purposes of subparagraphs (6) and (9) of this paragraph, the occupation of seaming (leg and foot) is defined as the joining of the sides of full-fashioned fabric from toe to the top of the welt, to form the hosiery.

(d) A worker who has had full training in any authorized learner occupation may be transferred to any other learner occupation for a period not to exceed one-half of the learning period authorized for the occupation at not less than \$1.07½ an hour in the seamless branch and not less than \$1.12½ an hour in the full-fashioned branch. A worker who has had partial training in any author-

ized learner occupation may be transferred to any other learner occupation for either: (1) A period not to exceed one-half of the learning period authorized for that occupation, at not less than \$1.07½ an hour in the seamless branch and not less than \$1.12½ an hour in the full-fashioned branch; or (2) the balance of the number of hours permitted as a learning period for the occupation to which he or she is being transferred, at the applicable special minimum rates set forth in paragraph (a) of this section: *Provided, however*, That (i) no worker may be employed as a learner at learner rates in more than two authorized occupations; (ii) no worker who has completed the authorized learning period in the occupation of pairing may be employed as a learner at learner rates in the occupations of folding or inspection; and (iii) no worker who has completed the authorized learning period may be employed as a learner at learner rates when transferring from the seamless branch of the hosiery industry to the full-fashioned or from the full-fashioned branch to the seamless, if the worker is employed in the same occupation as that in which he or she has been previously employed.

6. Section 522.50 is amended, to express a general denial policy, §§ 522.52 through 522.56 are revoked and the section headnote and introductory text of § 522.51 would be amended to delete reference to the revoked sections. The amended typographical units would read as follows:

§ 522.50 General denial policy.

All applications for the employment of learners in the shoe manufacturing industry, as defined in § 522.51 at wages lower than \$1.15 shall be denied.

§ 522.51 Applicability of § 522.50.

For the purpose of § 522.50, the shoe manufacturing industry is defined as follows:

7. Paragraph (a) of § 522.65 is amended to increase the special minimum wages prescribed therein, and reads as follows:

§ 522.65 Special minimum rates.

(a) The special minimum rates which may be authorized in special certificates issued in the glove industry shall be not less than \$1.00 per hour for the first 320 hours and not less than \$1.10 per hour for the remaining 160 hours in the leather glove, woven or knit fabric glove, and knitted glove branches of the industry, and not less than \$1.00 per hour for the first 320 hours and not less than \$1.05 per hour for the remaining 160 hours in the work glove branch of the industry.

8. In order to increase the special minimum rates presently prescribed therein by 15 cents an hour and to provide special minimum rates for workers newly covered by the Fair Labor Standards Amendments of 1961, 29 CFR 522.74, dealing with the independent telephone industry, is amended to read as follows:

§ 522.74 Special minimum rates.

(a) For exchanges with 750 or less stations (where the independently owned

company has more than 750 stations in one or more exchanges and thus the switchboard operators employed therein are not within the section 13(a) (11) exemption) the special minimum hourly rates to be provided in a special certificate for learners shall be not less than 85 cents an hour for the first 240 hours, and not less than 95 cents an hour for the remaining 240 hours of the learning period.

(b) For exchanges with more than 750 but less than 3,000 stations the special minimum hourly rates to be provided in special certificates for learners shall be not less than \$1.00 per hour for the first 240 hours, and not less than \$1.10 an hour for the remaining 240 hours of the learning period.

(c) For exchanges of 3,000 stations or more the special minimum hourly rate to be provided in a special certificate for learners shall be not less than \$1.05 an hour for the entire 240-hour learning period.

(d) The earnings of learners employed on a piece rate basis shall be based on those piece rates if in excess of the authorized special minimum rates, in accordance with § 522.6(j).

9. Paragraph (b) of § 522.84, dealing with the cigar industry, is amended by changing "two years" to "three years" as the period of previous experience of workers to be considered in applying the specified learning periods and by adding a new paragraph, designated paragraph (c), to provide that no worker shall be employed as a learner at special minimum rates in more than two of the learner occupations authorized by § 522.83. As amended, paragraphs (b) and (c) of § 522.84 read as follows:

§ 522.84 Learning periods.

(b) If a worker who is being trained in any machine occupation has been employed in that same occupation within the previous three years, the hours of such employment shall be deducted from the maximum learning period. If a worker who is being trained in any hand occupation has been employed in that same occupation within the previous five years, the hours of such employment shall be deducted from the maximum learning period for that occupation.

(c) No worker shall be employed as a learner at special minimum rates in more than two of the learner occupations authorized by § 522.83.

10. Paragraph (a) of § 522.85 is amended to increase by 15 cents per hour the special minimum wages prescribed therein, and as amended reads as follows:

§ 522.85 Special minimum rates.

(a) The special minimum rates which may be authorized in special certificates issued in the cigar industry shall be not less than \$1.00 per hour in the occupations of cigar machine operating and cigar packing; not less than \$1.00 per hour for the first 480 hours and \$1.07½ per hour for the second 480 hours in the occupations of hand rolling and hand bunch making; not less than \$1.00 per hour for the first 320 hours and \$1.07½ per hour for the second 320 hours in the occupation of hand making Italian

stogies; and not less than \$1.00 per hour in the occupations of hand stripping and machine stripping.

11. Amendments to §§ 522.92 and 522.93, dealing with the luggage, small leather goods, and ladies' handbag industries, are made to substitute "\$1.15 per hour" for "\$1.00 per hour". As amended, §§ 522.92 and 522.93 read as follows:

§ 522.92 Issuance of learner certificates.

In the absence of extraordinary circumstances, applications for the employment of learners at wages lower than \$1.15 per hour in these industries shall be denied.

§ 522.93 Learner certificates in extraordinary circumstances.

In those cases where extraordinary circumstances are shown to exist, learner certificates for the employment of learners at wages lower than \$1.15 per hour shall be issued in accordance with the provisions of the general learner regulations (§§ 522.1 through 522.9) only after all interested parties have been given opportunity to present their views on the application pursuant to § 522.4.

12. An amendment to § 522.102, dealing with the small electrical products industry, is made to substitute "\$1.15 per hour" for "\$1.00 an hour", and reads as follows:

§ 522.102 Issuance of learner certificates.

In the absence of exceptional circumstances applications for the employment of learners at wages lower than \$1.15 per hour in the small electrical products industry shall be denied.

13. Section 522.104, published in the FEDERAL REGISTER on February 3, 1961 (26 F.R. 1061), is amended to substitute "\$1.15 per hour" for "\$1.00 an hour", and reads as follows:

§ 522.104 General denial policy.

All applications for the employment of learners at wages lower than \$1.15 per hour in the men's and boys' clothing industry shall be denied. For the purpose of this section, the men's and boys' clothing industry is defined as the industry which manufactures men's, youths', and boys' suits, coats, and overcoats.

14. A new § 522.25 is added under the undesignated centerhead for the Apparel Industry declaring a general denial policy with respect to the rainwear, robes, and leather and sheep-lined divisions of that industry, and reads as follows:

§ 522.25 General denial policy.

All applications for the employment of learners at wages lower than \$1.15 per hour in the leather and sheep-lined clothing division of the apparel industry as defined in paragraph (f) of § 522.21 shall be denied.

15. A new undesignated centerhead entitled "Office and Clerical Occupations in any Industry" and new section declaring a general denial policy relating the employment of learners in such occupations would be added to 29 CFR Part 522 and would read as follows:

OFFICE AND CLERICAL OCCUPATIONS IN ANY INDUSTRY

§ 522.105 General denial policy.

All applications for the employment of learners at wages lower than \$1.15 per hour in office and clerical occupations in any industry shall be denied.

(Sec. 14, 52 Stat. 1068, as amended, sec. 14, Public Law 87-30; 29 U.S.C. 214)

II. In addition, several editorial amendments to 29 CFR Part 522 are made that are appropriate because of either the adoption of the proposals referred to above or because of the minimum wage requirements of the Fair Labor Standards Amendments of 1961. Good cause is hereby found for concluding that notice and public procedure are unnecessary regarding these amendments because of their minor nature. These amendments also shall become effective on September 3, 1961. Good cause is hereby found for providing no further delay in effective date, for since they are only editorial in nature no time period is needed by the public to prepare for their application. The amendments are as follows:

1. The heading of § 522.21 dealing with the apparel industry and the clause preceding paragraph (a) of that section are amended to read as follows:

§ 522.21 Applicability of § 522.20 to 522.25.

For purposes of §§ 522.20 to 522.25, the apparel industry consists of the following six divisions:

2. Paragraph (e) of § 522.24 is amended to read as follows:

§ 522.24 Special minimum rates.

(e) No experienced worker shall be employed under the terms of a special learner certificate, except as provided in paragraph (a) (2) of this section.

3. Section 522.103 relating to the issuance of special certificates in the small electrical appliances industry is amended to read as follows:

§ 522.103 Learner certificates in exceptional circumstances.

In each case where a prima facie showing of exceptional circumstances is initially made to the Administrator, the applicant will be given an opportunity to demonstrate at a public hearing, by reliable, probative, and substantial evidence, that the denial of the applicant for a special learner certificate will curtail opportunities for employment and that the granting of such certificate will not give a competitive advantage to the applicant or tend to depress working standards for experienced workers in the industry. At the public hearing interested persons will have full opportunity to appear, testify, and conduct such cross-examination as may be required for a full and true disclosure of the facts. In each case in which exceptional circumstances are shown to exist under the standards provided in this section, a special certificate for the employment of learners at wages less than \$1.15 an hour shall be issued in accordance with the provisions of the

general learner regulations (§§ 522.1 to 522.9).

Signed at Washington, D.C., this 30th day of August 1961.

DUANE A. WENDELE,
Acting Administrator.

[F.R. Doc. 61-8455; Filed, Sept. 1, 1961; 8:53 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER J—AIR FORCE PROCUREMENT INSTRUCTIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following miscellaneous amendments are issued to this subchapter:

PART 1001—GENERAL PROVISIONS

Subpart A—Introduction

Revise paragraph (a) of § 1001.109-50 as follows:

§ 1001.109-50 Deviations from AFPI or AFPC.

(a) Except for deviations from Subpart F, Part 1003 of this chapter, deviations from Air Force Procurement Instructions (AFPI) or Air Force Procurement Circulars (AFPC) will be made only by the Procurement Committee (MCPC), Hq AMC. Requests for authority to make such deviations will include complete justification and will be forwarded through channels to MCPC. Deviations which would involve major policy questions will be made only after coordination with the Director of Procurement and Production, DCS/M, Hq USAF. Deviations from Subpart F, Part 1003 of this chapter will be made only by and with the approval of one of the individuals authorized to approve ASPF deviations as set forth in § 1001.109-2. Requests for deviations from Subpart F, Part 1003 of this chapter will be forwarded to Hq USAF through AMC (MCPC).

Subpart C—General Policies

1. In § 1001.302-50, paragraph (b) is revised to read as follows:

§ 1001.302-50 Contracts between the Government and its employees, proposed subcontracts between Government prime contractors and Government employees.

(b) *Sales contracts.* Surplus property may not be sold to military personnel on active duty, to civilian employees of the Armed Forces, including the Department of Defense, or to the immediate families, dependents, or agents of the foregoing except as provided for in AFM 67-1, volume 6, chapter 11, paragraph 3a(2).

2. Add §§ 1001.312 and 1001.312-50 as follows:

§ 1001.312 Voluntary refunds.

Voluntary refunds and other refunds made by contractors by check will be

made payable to the Treasurer of the United States. It is preferred that such checks be submitted to the cognizant contracting officer. In any event, the check will immediately be forwarded by its recipient to the nearest accounting and finance office. The accounting and finance office will furnish the recipient of the check a copy of the collection voucher. If the appropriate account to be credited cannot be readily determined, the check will be placed temporarily in a suspense account, and immediate steps will be taken to determine the account to be credited. When the appropriate account has been determined the cognizant PCO will be so notified, and the necessary supplementary contractual action will be taken to permit collection as an appropriation refund. Where the appropriate account cannot be identified, the refund will be transferred to the appropriate miscellaneous receipt account according to current accounting and financial procedures.

§ 1001.312-50 Other than voluntary refunds.

The following are examples of refunds and receipts of funds excluded from the definition of voluntary refunds as set forth in § 1.312 of this title and § 1001.312:

(a) Interim refunds made under fixed-price redeterminable and fixed-price incentive contracts (Subpart Z, Part 1054 of this chapter).

(b) Debts owed by contractors and deferred payments (Subpart V, Part 1054 of this chapter).

(c) Adjustment of funds under active AF contracts (Subpart C, Part 1053 of this chapter).

(d) Refund of overpayments disclosed by voluntarily reopened repricing negotiations (Comp. Gen. Dec. B-130534, April 30, 1957).

(e) Other contractual provisions or agreements between the contracting parties requiring such refunds (tax refunds, rebates, etc.).

3. Revise § 1001.313-50 to read as follows:

§ 1001.313-50 Initial procurement.

Initial quantities of spare parts, with the exception of military, industry, and contractor standard items, will normally be procured from the end item manufacturer. These parts may be procured through provisioning procedures when appropriate utilizing authorized spare parts provisioning documents (Part 1055 of this chapter). Any deviations to established contractual provisioning documents must be coordinated with the Management Concept Branch (MCSRO), Hq AMC, prior to obtaining approval of Hq AMC, MCPC, according to § 1001.109-50.

§ 1001.313-51 [Amendment]

4. In line 3 of § 1001.313-51 the word "for" should be amended to read "from."

5. Add §§ 1001.314 to 1001.314-57, as follows:

§ 1001.314 Contracting officer's decision under the disputes clause.

This section deals with preparing decisions and processing appeals under the

Disputes clause by contracting officers. The application of the following instructions are limited to cases where the Disputes clause contained in § 7.103-12 of this title is used. Where the Disputes clause of § 1007.4205-8 of this chapter is used, the oversea command staff judge advocate rather than the Staff Judge Advocate, Hq AMC, will be the source of advice regarding proposed decisions and will be the channel for forwarding data relating to appeals (also see the instructions preceding the clause in § 1007.4205-8 of this chapter).

(a) *Preparation of decision.* Where mutual agreement on a question of fact proves impossible, a findings and decision must be prepared by the contracting officer. This single document in the format set forth in §§ 1001.314-54 and 1001.314-55 should contain a simple and concise statement of: (1) The claim, (2) the decision, (3) the findings of fact which support the decision, and (4) the reference to the Disputes clause contained in the format. The factual determination must be relevant to the issues and supported by documents or oral statements.

(b) *Legal advice by Staff Judge Advocate, Hq AMC.* All written findings and decisions, except termination for defaults and assessment of excess costs, will, prior to transmittal to the contractor, be referred for comment to the Staff Judge Advocate, Hq AMC, together with pertinent documents and summaries of anticipated testimony of all Government witnesses. Default and excess costs findings and decisions will be submitted to the appropriate field staff judge advocate. When referrals to the staff judge advocate are made, the accompanying file will be complete in all respects. The file should contain: (1) Copy of the contract, and all applicable amendments, specifications and drawings; (2) communications relative to the subject matter of the dispute; and (3) any additional information.

(c) *Transmittal to contractor.* After the referral described in paragraph (b) of this section has been accomplished, the findings and decisions will be re-examined by the contracting officer in the light of the advice and comments proffered by the appropriate staff judge advocate. If, in the judgment of the contracting officer, re-examination reveals the propriety of modifications or additions, he will make the appropriate changes. After such re-examination, and changes if appropriate, he will transmit the findings and decision to the contractor in person, obtaining a receipt therefor, or by certified mail, return receipt requested.

(d) *Amendment after transmittal to contractor.* After a timely appeal has been taken to the Armed Services Board of Contract Appeals, the contracting officer who has rendered findings and a decision, or his successor, may for good cause recommend that the findings and decision be corrected or amended. Such recommendation will be forwarded to the Staff Judge Advocate, Hq AMC, together with the file required by paragraph (b) of this section as supplemented to support the recommended correction or amendment.

§ 1001.314-50 Appeals.

See Appendix A, § 30.1 of this title, for Rules of the Armed Services Board of Contract Appeals.

§ 1001.314-51 Processing.

(a) When a notice of appeal in any form has been received by the contracting officer from whose findings and decision the appeal is taken, he will comply with Rule 4, Part II, Appendix A, § 30.1 of this title. The envelope in which the notice of appeal was received will be promptly forwarded with the original copy of the notice, to the Board. As soon as practical thereafter he will send the Staff Judge Advocate (MCJ), Hq AMC, a copy of the notice and other pertinent documents (in duplicate) as required by Rule 4. The Staff Judge Advocate should in all cases be advised of the postmark on the envelope or date of receipt of the notice of appeal if otherwise transmitted.

(b) If AF personnel other than the contracting officer involved receive the notice of appeal, they will:

(1) Note on all copies of the notice of appeal the date of mailing or the date of receipt if otherwise transmitted.

(2) Promptly forward to the Board the original notice of appeal together with the envelope in which the notice of appeal was received or any other documentary evidence of mailing or receipt of such notice.

(3) Notify the Staff Judge Advocate (MCJ), Hq AMC, or oversea command staff judge advocate if applicable, that the notice of appeal has been forwarded to the Board. If two or more copies of the notice of appeal are furnished all copies other than the original will be forwarded to MCJ. Otherwise, a copy of the notice of appeal should be made for MCJ, if practical. If no copies are available or legible copies cannot be made, the number of the contract and the name of the contractor should be furnished MCJ.

(c) Attention is invited to the note in ASBCA Rule 4 which reads as follows:

Attention is invited to Rule 31, below, providing an Optional Accelerated Procedure for cases involving \$5,000 in amount or less. It is the duty of the contracting officer to advise the contractor of the Optional Accelerated Procedure in connection with an appeal involving \$5,000 in amount or less.

The contracting officer will so advise the contractor when it appears that the monetary amount in issue is less than \$5,000.

(d) Upon receipt of information that a notice of appeal has been filed, the Staff Judge Advocate, Hq AMC, will request the contracting officer to furnish the information required in paragraph (a) of this section. Two copies of all requested documents will be furnished MCJ.

§ 1001.314-52 Contractor's compliance and withdrawal after appeal is filed.

Whenever the contractor, subsequent to filing an appeal with the Armed Services Board of Contract Appeals, elects nevertheless to accept fully the findings and decision from which appeal was taken or any amendment thereof, and gives written notification of such acceptance to the contracting officer con-

cerned, the contracting officer will be responsible for promptly sending the contractor's notice of acceptance to the Staff Judge Advocate, Hq AMC. Upon receipt of the notice the Staff Judge Advocate in collaboration with the contractor will prepare and submit a joint motion of withdrawal to the Board. Similar action will be taken by the contracting officer in instances where the contractor, after filing an appeal with the Armed Services Board of Contract Appeals, in writing signifies partial acceptance with the findings and decision of the contracting officer.

§ 1001.314-53 Assistance in connection with pretrial conference and hearings.

At all times after the filing of an appeal, the contracting officer will render all assistance requested by the Staff Judge Advocate, Hq AMC. Whenever an appeal is set for hearing, the contracting officer concerned, acting under the guidance of the Staff Judge Advocate, Hq AMC, will be responsible for arranging for the presence of Government witnesses and specified physical and documentary evidence at both the pretrial conference and the hearing.

§ 1001.314-54 Suggested format; decision in accordance with disputes clause.

(Date of findings and decision)
Subject: Decision Disallowing Request of -----

(Name of contractor)
Under Contract No. ----- Date -----
To: -----
(Name and address of contractor)

1. In accordance with the provisions of the above-numbered contract, the undersigned contracting officer has duly considered your request for (insert factual description of the request to identify clearly its nature and scope.)

2. The undersigned contracting officer has decided that your request as set forth above, is disallowed (in whole or in part, according to the fact) for the following reasons:

(Insert the findings of fact upon which the disallowance is based.)

3. The "Disputes" clause of the contract provides that within 30 days from the date of receipt hereof the contractor may appeal from this decision by mailing or otherwise furnishing to the contracting officer a written appeal addressed to the Secretary of the Air Force. Two copies should accompany the original notice of appeal. The notice of appeal should identify the contract (by number), the decision from which the appeal is taken and be signed by appellant or an officer of appellant organization or by a duly authorized representative or attorney. Within 30 days after receipt of notice of docketing of the appeal by the Board, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each claim showing entitlement to relief.

§ 1001.314-55 Alternative suggested format; to be used when a termination for convenience dispute is involved.

Subject: Findings Pertaining to Termination Claim -----
(Name of contractor)
Under Contract No. ----- Date -----
To: -----
(Name and address of contractor)

1. Your claim for (insert factual description of the claim to identify clearly its

nature and scope) in connection with the above cited contract has been duly considered by the undersigned contracting officer.

2. In accordance with the provisions of Clause ----- (insert the title of the pertinent termination clause) of the contract the undersigned contracting officer finds as follows: (Insert all pertinent factual data, such as, date of termination of contract, date of submission of settlement proposal, items and amounts allowed and disallowed, together with reasons therefor).

3. The "Disputes" clause of the contract provides that within 30 days from the date of receipt hereof, the contractor may appeal from this decision by mailing or otherwise furnishing to the contracting officer a written appeal addressed to the Secretary of the Air Force. Two copies should accompany the original notice of appeal. The notice of appeal should identify the contract (by number), the decision from which the appeal is taken and be signed by appellant or an officer of appellant organization or by a duly authorized representative or attorney. Within 30 days after receipt of notice of docketing of the appeal by the Board, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each claim showing entitlement to relief.

§ 1001.314-56 Delegation of authority to process contract appeals.

The Commander, AMC, has been delegated authority to process all contract appeals directly to the Armed Services Board of Contract Appeals and the Appeal Board, Office of Contract Settlement. The Commander, AMC, has further delegated this authority to the Staff Judge Advocate, Hq AMC, with power of redelegation.

§ 1001.314-57 Staff Judge Advocate, Hq AMC.

The Staff Judge Advocate, Hq AMC, is the duly designated trial attorney to represent the Government in the defense of appeals before the Armed Services Board of Contract Appeals or the Appeal Board, Office of Contract Settlement. Decisions of the Armed Services Board of Contract Appeals by the Staff Judge Advocate, Hq AMC, will be transmitted to the appropriate contracting officer for action according to the Board's decision. When the Chief Trial Attorney determines that the best interest of the Air Force will be served, a motion for reconsideration of an adverse decision will be filed.

6. Add §§ 1001.360 and 1001.361 as follows:

§ 1001.360 Requests from foreign entities for information as to acquisition of production and sales rights to United States military end items.

(a) This section provides instructions for processing a request of a foreign entity for information concerning acquisition of production and sales rights to United States military end items.

(b) This section applies to AMC field procurement activities assigned prime class procurement, all major overseas commands, AMFPA, and AMFEA.

(c) It is AF policy to assist potential foreign producers of AF military end items to identify the United States qualified production sources. Whenever a foreign production source (either a friendly foreign government or a pri-

vate entity of a friendly foreign government) requests information on the appropriate procedure to be followed in acquiring production or patent rights to an AF military end item, it is deemed essential that AF personnel provide a complete list of United States military department sources, together with addresses, as expeditiously as possible.

(d) AF personnel initially contacted by the foreign entity will assist the inquirer in identifying each AF item by stock number and nomenclature designation. In addition, the offshore unit will determine the AF activity which has procurement responsibility of each item and advise the inquirer to write directly to the director of procurement and production of that activity.

(e) Upon receiving such requests, the appropriate AF activity within the continental United States will:

(1) Secure a complete list of United States Military sources together with addresses presently on record at that activity for the item involved.

(2) Send this list directly to the foreign entity and advise the foreign potential producer to contact the United States source(s) direct. This letter will be substantially as follows:

Forwarded herewith according to your request is a list of United States military sources presently on record at this activity as United States manufacturer of -----
(Item)

Inasmuch as the ultimate decision insofar as patent rights and technical assistance arrangements are concerned, rests with the owner of the patents which may be involved and the United States producers of the item, no commitment is made on behalf of the United States Government.

If further information is desired, it is requested that the attached list be utilized for contacting the United States manufacturers direct.

(3) No other information will be released to a foreign entity without the approval and coordination of the local office of the staff judge advocate.

(f) At the same time the list is forwarded, each United States producer whose name has been included on the list will be advised of the inquiry. Since the ultimate decision, insofar as patent rights and technical assistance are concerned, rests with the owner of the patents which may be involved and the United States producer(s) of the item, no position will be taken in this respect and no commitments made on behalf of the United States Government. This letter will be substantially as follows:

It is the policy of the Department of the Air Force to assist potential foreign producers of Air Force military end items to identify the United States qualified production sources.

Pursuant to this policy your company's name has been forwarded to -----

(Foreign entity's name and address)
according to their request as a producer of -----

(Item description)
Inasmuch as the ultimate decision, insofar as patent rights and technical assistance arrangements are concerned, rests with the owner of the patents which may be involved and the United States producers of the items, no commitments can be or were made on behalf of the United States Government.

No further action on this matter will be taken by this activity. However, it is hoped that the Air Force has been of some assistance to you in establishing contact between your own concern and a potential foreign source of -----

(Item)

(g) If a request is received from a foreign entity which contemplates production in other than a friendly country or if the AF item is classified, the request will be referred with recommendations to Hq USAF (AFMPP).

(h) The AF policy is to lend every assistance in identifying the interested parties and to aid United States private entities in processing an application to the United States Department of State or Commerce for export license or approval of a contemplated production and sales program abroad. The procedures outlined in this section afford the Department of the Air Force ample opportunity at Hq USAF to make recommendations to the Department of Defense which, after review, forwards the Department of Defense recommendations to the Department of State. The Department of State is the established and solely authorized United States Government instrumentality for final determination in respect to release of United States military end items for production and sale outside the continental United States by foreign entities.

§ 1001.361 Hospitalization and medical care for contractor's employees at overseas installations.

The following policy contained in DOD Directive 6310.4, will be followed by all procurement activities.

(a) Under existing statutes and procurement regulations, the Military Departments have the authority, under certain circumstances, to contract for the hospitalization and medical care of employees of contractors with the United States at overseas locations, as a part of the consideration for such contracts.

(b) During the present shortage of medical personnel, all practical means should be employed to reduce the workload of the medical departments of the services and to make the most efficient use of available personnel. Accordingly, in negotiating such contracts, it is requested that all procurement authorities in the military departments be instructed to avoid conditions which would place upon the services the responsibility of providing medical and dental care and hospitalization for contractor's employees; except when isolation and lack of civilian facilities for hospitalization or economic advantage to the Government become overriding factors of importance.

(c) This policy does not apply to preventive medical functions overseas, which remains the responsibility of the military departments.

Subpart D—Procurement Responsibility and Authority

1. In § 1001.453, add a new paragraph (p), as follows:

§ 1001.453 Delegations of authority.

(p) Authorities vested in Deputy Directors of Procurement and Production are likewise vested in Technical Associates performing procurement and production functions at comparable level.

2. In § 1001.454(c), subparagraphs (8) to (13) are deleted and the following substituted therefor:

§ 1001.454 Authority to designate contracting officers and representatives thereof.

(8) Commander and deputy commander, AMC centers.

(9) Director, Air Force Academy Construction Agency, who may also designate persons not under his jurisdiction as representatives of contracting officers.

(10) Commanders and Deputy Commanders, Air Materiel Forces, who may also designate persons under the jurisdiction of other AF commands as representatives of contracting officers. Further redelegation may be made to commanders of first echelons of command immediately subordinate to the AMF.

(11) Commander and Deputy Commander, 2709th AF Vehicle Control Group.

3. Revise § 1001.457 to read as follows:

§ 1001.457 Authority to enter into, execute and approve contracts.

(a) * * *

(1) *Commanders of major air commands within the continental United States except AMC and ARDC.* Authority is limited to making awards and manually approving contracts involving \$100,000 or less except Commander, Military Air Transport Service, who has been authorized to make awards and manually approve contracts involving \$350,000 or less. Commanders may delegate authority to manually approve contracts not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to the major air command. Commanders may authorize contracting officers within the major air command to make awards and execute contracts involving \$100,000 or less. Delegations of procurement authority to contracting officers must be uniform throughout the major air command. (See subparagraph (7) of this paragraph for ARDC.)

(2) *Commanders of major overseas commands.* Commanders may delegate authority to manually approve contracts not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to the major air command. Commanders may authorize contracting officers within the major air command to make awards and execute contracts involving \$100,000 or less. Delegations of procurement authority to contracting officers must be uniform throughout the major air command.

* * *

(4) *Commander, 2709th AF Vehicle Control Group.* Authority is limited to:

(i) Making awards and manually approving contracts involving \$350,000 or less, and (ii) manually approving contractual instruments which do no more than obligate overruns on cost-plus-a-fixed-fee contracts. Authority may be redelegated to: (a) Chief, Procurement and Production Division, (b) Deputy Commander during absences of the Commander, and (c) contracting officers under his jurisdiction to make awards and execute contracts involving \$30,000 or less, except that production lists or calls under open contracts and orders under provisioning documents for items already on contract may be issued (through administrative contracting officers) to contractors irrespective of dollar amount.

(5) *Commanders, air materiel areas and Dayton AF Depot.* Authority is limited to: (i) Making awards and manually approving contracts as a result of formal advertising or small business restricted advertising irrespective of dollar amount (authority to approve supplemental agreements amounting to more than \$1,000,000 which result from the exercise of an option is excluded), (ii) making negotiated awards and manually approving contracts involving amounts of \$1,000,000 or less, and (iii) manually approving contracts which do no more than obligate overruns on cost-plus-a-fixed-fee contracts. Authority may be redelegated to: (a) Directors of procurement and production, (b) deputy commanders during absences of the commander, (c) Director, USAF Logistic Control Group for amounts of \$100,000 or less, and (d) contracting officers under their jurisdiction to make awards and execute contracts involving \$30,000 or less, except that production lists or calls under open contracts and orders under provisioning documents for items already on contract may be issued (through administrative contracting officer) to contractors irrespective of dollar amount.

NOTE: The limiting authority up to \$30,000 is not applicable to obligating funds previously committed (but not obligated) in the basic contract.

(6) *Commanders of separate AMC installations (excludes AMC field procurement activities and air materiel forces) under the direct jurisdiction of the Commander, AMC.* Authority is limited to making awards and manually approving contracts involving \$100,000 or less. Commanders may authorize contracting officers under their jurisdiction to make awards and execute contracts involving \$30,000 or less.

(8) *Deputy Directors and the Assistant to the Director, of the Directorate of Procurement and Production, Hq AMC.* Normally, the authority with respect to manually approving contracts, involving \$1,000,000 or less, that are subject to manual approval of a duly authorized official of the Directorate of Procurement and Production, Hq AMC, because of limitations on delegated authority, will be exercised by a

Deputy Director or the Assistant to the Director, of the Directorate of Procurement and Production, Hq AMC. Such contracts involving more than \$1,000,000 are normally approved by the Director of Procurement and Production, Hq AMC, but in his absence may be approved by one of the Deputy Directors or the Assistant to the Director, or by an individual officially designated as "Acting" in one of the above capacities. For the purpose of the dollar limitations in this section, acquisition cost on any industrial facilities to be furnished under a facilities contract will not be added to the amount of funds being obligated on that contract.

(11) *Commanders and deputy commanders, air materiel forces, . . .* Administrative contracting officers under the jurisdiction of the air materiel force may be authorized to exercise the authority described in subparagraph (12) of this paragraph.

(12) *Administrative contracting officers.* Authority is limited to: (i) Issuing calls according to the provisions of AMCR 20-19; (ii) pricing and, where a price redetermination clause is applicable, repricing calls against indefinite quantity, indefinite price (open) contracts, and executing documents establishing such initial or revised prices after review and approval according to the provisions of Subpart F, Part 1055 of this chapter, subject to the requirements of paragraph (b) of this section; (iii) retroactive repricing of FPR-E type contracts and executing supplemental agreements establishing such revised prices, subject to the requirements of paragraph (b) of this section; (iv) pricing and, where a price redetermination clause is applicable and the procuring contracting officer specifically makes the assignment, repricing support items procured under a provisioning document concurrently with the end items to which they relate, and executing contractual documents establishing such initial or revised prices (estimated cost and fee) after review and approval as provided in Subpart F, Part 1055 of this chapter, subject to the requirements of paragraph (b) of this section; (v) executing orders for supplies and services pursuant to the terms of a contract that authorizes such action; and (vi) issuing POODs or similar documents to obligate funds previously committed when necessary to cover obligations arising from authorized contractual actions.

(b) * * *

(1) * * *

(i) * * *

(c) Commander and Deputy Commander, AMC centers, with power of redelegation.

(d) Commanders, air materiel forces with power of redelegation to no lower

than the director of procurement and production in the first echelon of command immediately subordinate to the air materiel force, except that an increase in price in excess of \$350,000 will be reviewed by MCPC, Hq AMC, and manually approved according to paragraph (a) (8) of this section.

(e) Commander, 2709th AF Vehicle Control Group, with power of redelegation to no lower than the Chief, Procurement and Production Division, except that an increase in price in excess of \$350,000 will be reviewed by MCPC, Hq AMC, and manually approved by a duly authorized approving official within the Directorate of Procurement and Production, Hq AMC.

(f)-(g) [Deleted]

§ 1001.459 [Amendment]

4. In § 1001.459, "Manual approval of architect-engineer contracts";

a. The reference in the last line of paragraph (a) is changed to read: "paragraph (b) (1) (ii) of this section."

b. In paragraph (b) (2), subdivisions (ii) to (vi) are deleted and the following substituted therefor:

(ii) Commander and Deputy Commander, AMC Aeronautical Systems Center and AMC Electronic Systems Center.

(iii) Commanders and deputy commanders, air materiel areas.

(iv) Commander and deputy commander, Dayton AF Depot.

(v) Commanders and deputy commanders, air materiel forces.

(vi) [Deleted]

5. Revise § 1001.460 to read as follows:

§ 1001.460 Priorities authority; DO and DX ratings; allotments, and rescheduling deliveries.

(a) The Commander, AMC has been delegated authority as described below with respect to: (1) DO rating program, (2) DX rating program for contracts and orders identifiable to programs of the highest national priority, and (3) allotting and rescheduling deliveries. These authorities are to be exercised within the limits of such allocation determinations or other quantitative restrictions as may be established from time to time by proper authority (see § 1.307 of this title). Each person who redelegates the authority will maintain a record of such redelegation and limits placed thereon.

(i) Authority to apply or assign the right to apply DO and DX ratings to contracts and delivery orders to meet DOD programs authorized for priorities support by the Office of Civil and Defense Mobilization or designated by OCDM as eligible for priorities support through the Department of Defense.

(ii) Authority to apply or assign the right to apply DO and DX ratings to certain prime or subcontractors on orders for delivery of production equipment specifically required to support

authorized programs of the Department of Defense or of such other specifically designated programs.

(iii) Authority to apply or assign the right to apply DO and DX ratings to certain contractors on orders for delivery of construction equipment for use on construction in Alaska, Hawaii, or outside the United States.

(iv) Authority to make allotments of controlled materials and to apply or assign to others the right to apply allotment numbers to ratable contracts and delivery orders within the allotment jurisdiction of the Department of Defense.

(v) Reschedule deliveries of materials which are required in support of the Aircraft (A1) program and the AF portion of the Missiles (A2) program. Such authority is limited to rescheduling deliveries on rated orders or authorized controlled materials orders which: (a) Bear the designated program identifications, and (b) were issued by or pursuant to the authority of the delegate, or, if not, that the rescheduling is requested or concurred in by the department or associated agency under whose authority they were issued. Rescheduling of delivery may be directed only if it requires no change in the production schedule of the person making the delivery.

(vi) Administer the DMS Audit Program of Selected Airframe and Aircraft Component Plants assigned to DOD under the Department of Defense—Department of Commerce Interagency Compliance Agreement.

(b) The authority has been redelegated by the Commander AMC, to the Director of Procurement and Production, Hq AMC. Further redelegation has been made by the Director of Procurement and Production, Hq AMC, as follows:

(1) All of the authority set forth in paragraph (a) (3) (i) to (vi) of this section to the Commander, AMC Aeronautical Systems Center with power of redelegation.

(2) The authority set forth in paragraph (a) (3) (i) to (iii) of this section to and through successive echelons of command to all contracting officers (including procuring and administrative) of the Air Force.

§ 1001.480 [Amendment]

6. In § 1001.480, revise the second sentence of the introductory paragraph to read as follows: "Authorities are initially vested in the Secretary of the Air Force who has, in turn, redelegated authority through his Assistant Secretary (Materiel), and Deputy Chief of Staff, Materiel, Hq USAF, to the Commander, Air Materiel Command.

§ 1001.480-2 [Amendment]

7. In § 1001.480-2, revise items 3, 4, 5, 7, 8, 9, 10, 11, 13, 21, 22, 23, 25, 26, 27, and 37; delete and reserve 12 and add new 14, 39, and 40, as follows:

A Subject and reference	B Hq AMC	C AMAs, AF depots, CONUS and AMC centers	D Air materiel forces (AMF) and AMC separate installations	E AF commands CONUS	F AF commands—Overseas air attachés and foreign missions
* * *	* * *	* * *	* * *	* * *	* * *
3. Enter into, execute, and approve contracts. Reference: § 1001.457. NOTE: Unless otherwise indicated, the authority vested in contracting officers is limited to making awards and executing contracts.	Comdr, AMC, no dollar limitation. Power to redelegate: Unlimited. DoPP, no dollar limitation. Power to redelegate: Unlimited. DDoPP, and the Ass't to the Director, normally manual approval \$1,000,000 or less (see § 1001.457 (a)(8)). Power to redelegate: None.	Comdr AMA's and Dayton AF Depot, subject to § 1001.457(a)(5): Formal advertising—Unlimited; Negotiated—\$1,000,000; Overruns on CPFF contracts—Unlimited. Power to redelegate: DoPP, Director of USAF LCG, \$100,000 or less. D Comdrs during absences of Comdrs. AMC centers, subject to § 1001.457(a)(9): Formal advertising—Unlimited; Negotiated—\$1,000,000; Overruns on CPFF contracts—Unlimited; Engineering changes—Unlimited; Short form facilities contracts—Unlimited. Power to redelegate: Unlimited.	Comdrs and D Comdrs AMF's, \$350,000 or less. Power to redelegate: 1st echelon staff officers, CO's—\$100,000 or less. ACO's, CMR's and AMF's (see § 1001.457 (a) (6) and (11) for specific authorities). Power to redelegate: None. Comdr, AMC separate install. under the direct jurisdiction of the Comdr, AMC—\$100,000 or less. Power to redelegate: CO's, \$30,000 or less. Comdr, 2709th AF Vehicle Control Gr—\$350,000 or less; Overruns on CPFF contracts—Unlimited. Power to redelegate: DoPP. D Comdrs during absences of Comdrs, CO's—\$30,000 or less.	Comdr, \$100,000 or less except Comdr MATS—\$350,000 or less. Power to redelegate: 1st echelon staff officer (approval) and CO's—\$100,000 or less. Comdr, ARDC, for R&D matters, no dollar limitation subject to: (a) Negotiated research contracts in excess of \$1,000,000 require review by Hq AMC (MCPC) and manual approval by an ARDC approving official. (b) Negotiated contracts other than research in excess of \$1,000,000 require review by Hq AMC (MCPC) and manual approval by an AMC approving official. (c) WADD, only for procurement of research and of armament development using 650 series funds. (d) Formal advertising—Unlimited (See § 1001.457(a)(7)(ii)). (e) Overruns on CPFF contracts—Unlimited. (See § 1001.457(a)(7)(v)). Power to redelegate: Unlimited. Director, AF Academy Construction Agency, \$350,000 or less. Power to redelegate: None. Contracting Officers, AF Academy Construction Agency, \$30,000 or less, subject to such limitations as may be imposed by the Director, AFACA. Power to redelegate: None.	Comdrs, overseas commands, no dollar limitation. Power to redelegate: 1st echelon staff officer (approval). Contracting officers for amounts of \$100,000 or less. Air Attachés and Chiefs of AF foreign missions—\$100,000 or less, except JUSMIG—Spain—\$1,000,000 or less. Power to redelegate: Contracting officers for amounts of \$100,000 or less.
4. Make determinations and findings in support of incentive-type, cost-type and CPFF-type contracts. Reference: § 1003.303 of this chapter.	Comdr, AMC. Power to redelegate: Unlimited. DoPP and DDoPP. Power to redelegate: Unlimited except to contracting officers for procurement involved.	Comdr, AMA's. Power to redelegate: Not below DDoPP. Comdr, AMC Centers. Power to redelegate: Unlimited. Comdr, Dayton AF Depot. Power to redelegate: Not below DDoPP.	Comdr, and D Comdr, AMF, as stated in § 1003.303(g) of this chapter. Power to redelegate: 1st echelon staff officer. Comdr 2709th AF Vehicle Control Group. Power to redelegate: Not below Deputy Chief, Proc and Prod Div.	Comdr, ARDC, for R&D (except base procurement). Power to redelegate: Unlimited. Comdr, Air Training Command as stated in § 1001.464. Power to redelegate: Staff officer responsible for procurement within Hq ATC. Director, AF Academy Construction Agency as stated in § 1003.303(e). Power to redelegate: None. Comdr, MATS, as stated in § 1003.303(c)(5) of this chapter. Power to redelegate: Not below Chief, Procurement Div Hq MATS.	
5. Make determinations—mistakes in bid prior to award pursuant to § 2.406 of this title. Reference: § 1002.406 of this chapter.	Staff Judge Advocate. Power to redelegate: None.				
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7. Manual approval of Architect-engineer contracts. Reference: § 1001.459.	Comdr AMC and DoPP—\$1,000,000 or less if secretarial F&D has been made. Power to redelegate: As stated in SAFO 640.5.	Comdr and D Comdr, AMA's and Dayton AF Depot—\$500,000 or less if individual secretarial F&D; \$100,000 or less if blanket secretarial F&D. Power to redelegate: None. CBMC and DCBMC—\$1,000,000 or less (includes L/C) subject to § 1001.459. Power to redelegate: None. CASC, DCASE, CESC, and DCESC—\$500,000 or less if individual secretarial F&D; \$100,000 or less if blanket secretarial F&D. Power to redelegate: None.	Comdr and D Comdr, AMF—\$500,000 or less if individual secretarial F&D; \$100,000 or less if blanket secretarial F&D. Power to redelegate: None. Comdr and D Comdr, activities under AMF's—\$5,000 or less subject to § 1001.459. Power to redelegate: None. Comdr, Wright-Patterson AF Base—\$5,000 or less subject to § 1001.459. Power to redelegate: None. Comdr and D Comdr, 2709th AF Vehicle Control Gr—\$5,000 or less. Power to redelegate: None.	Comdr—\$500,000 or less if individual secretarial F&D; \$100,000 or less if blanket secretarial F&D. Power to redelegate: V Comdr and command staff officer responsible for procurement. Comdr, V Comdr and command staff officer responsible for procurement to any AF base under their jurisdiction—\$5,000 or less subject to § 1001.459, except that SAC may also redelegate to Comdr, 16th Air Force for contracts involving \$50,000 or less.	Comdr, overseas commands—\$100,000 or less if secretarial F&D has been made. Power to redelegate: V Comdr and command staff officer responsible for procurement. Comdr V Comdr and command staff officer responsible for procurement to any AF base under their jurisdiction—\$5,000 or less subject to § 1001.459. Chief, Joint US Military Group Spain—\$50,000 or less if secretarial F&D has been made. Power to redelegate: None.

A Subject and reference	B Hq AMC	C AMAs, AF depots, CONUS and AMC centers	D Air materiel forces (AMF) and AMC separate installations	E AF commands CONUS	F AF commands—Overseas air attachés and foreign missions
8. Contractor overtime approval, subject to circumstances in § 12.102-4(a) (1), (2), and (3) of this title. Reference: § 1012.102 of this chapter.	Comdr, AMC and D Comdr during temporary absence of Comdr. DoPP and DDoPP during temporary absences of Director. Power to redelegate: None.	Comdr AMA's, Dayton AF Depot and D Comdrs during temporary absences of Comdr. Power to redelegate: None. Comdr, AMC centers and D Comdrs during temporary absences of Comdr. Power to redelegate: None.	Comdr 2709th AF Vehicle Control Group and D Comdr during temporary absences of Comdr. Power to redelegate: None.	Comdr, ARDC and D Comdr during temporary absences of Comdr. Dir of Procurement Hq ARDC and DDoP during absences of the Director. Power to redelegate: None.	
9. Contracts for public utility services (power, gas and water) extending beyond current fiscal year. Reference: § 1001.461.	Comdr, AMC, no dollar limitation but subject to § 1001.461(a). Power to redelegate: Unlimited. DoPP and DDoPP, no dollar limitation. Power to redelegate: Unlimited.				
10. Make determinations under the "Buy American Act" based on nonavailability of supplies or materials. Reference: § 1006.103-2 of this chapter.	Comdr and D Comdr, AMC; DoPP and DDoPP; Div chiefs, DoPP. Power to redelegate: None may redelegate.	Comdr, D Comdr; DoPP—AMA's and AF Depots; Comdr and D Comdr, AMC Centers; Div Chiefs (or comparable level), AMC centers. Power to redelegate: None may redelegate.	Comdrs, D Comdr, Dir of Contract Adm, Chiefs, APD-CMR's. Power to redelegate: None. Comdr, D Comdr, Chief, Proc and Prod Div, 2709th AF Vehicle Control Group. Power to redelegate: None.	Comdr and D Comdr, ARDC. Director and Deputy Director of Procurement, Hq ARDC. Power to redelegate: None.	
11. Authorize publication of advertisements in newspapers. Reference: § 1001.1005.	Comdr, AMC, as stated in § 1001.1005-5(b): DoPP and DDoPP, Div Chiefs, DoPP. Power to redelegate: None may redelegate.	As stated in § 1001.1005-5(a), Comdr and D Comdr, AMC centers. Div Chiefs (or comparable level), AMC centers, DoPP, AMA's and AF Depots. As stated in § 1001.1005-5(b): Base commanders maintaining Central Civilian Personnel Office. Power to redelegate: None may redelegate.	As stated in § 1001.1005-5(a): DoPP, AMF's. Comdr, 2704th AS and DG, Comdr, W-P AFB, Comdr, 2709th AF Veh Control Group. As stated in § 1001.1005-5(b): Base Comdrs, maintaining Central Civilian Personnel Office. Power to redelegate: None may redelegate.	As stated in § 1001.1005-5(a): Comdr and V Comdr. As stated in § 1001.1005-5(b): Base Comdrs maintaining Central Civilian Personnel Office. Power to redelegate: None may redelegate.	As stated in § 1001.1005-5(a): Comdr and V Comdr of oversea commands. As stated in § 1001.1005-5(b): Base Comdrs maintaining Central Civilian Personnel Office. Power to redelegate: None may redelegate.
12. [Delete; reserve.]					
13. Control Government-owned industrial property. a. Correct and adjust deficiencies. b. Grant exceptions to policy that contractors' records will be designated as official records. c. Appoint property administrators. Reference: § 1013.103 of this chapter.	Comdr, AMC. Power to redelegate: Unlimited. DoPP and DDoPP. Power to redelegate: Unlimited.	Comdr, D Comdr—AMC field procurement activities. Power to redelegate: 13b only and only as prescribed in § 1013.103(c)(4) of this chapter.	Comdr and D Comdr, AMF. Power to redelegate: Not below a 1st echelon staff officer. Comdr, D Comdr, AMC separate local purchase activities. Power to redelegate: 13b only and only as prescribed in § 1013.103(c)(4) of this chapter. Comdr and D Comdr—CMR's. Power to redelegate: 13b only and only as prescribed in § 1013.103(c)(4) of this chapter.	Comdr, V Comdr. Power to redelegate: Staff officers responsible for procurement within command headquarters and 1st echelon staff officer. Director, AF Academy Construction Agency. Power to redelegate: None.	Comdr, V Comdr. Power to redelegate: Staff officers responsible for procurement within command headquarters and 1st echelon staff officer. Air attachés and chiefs of foreign missions. Power to redelegate: None.
14. Enter into and execute leases of machine tools and other production equipment. Reference: § 1013.3002 of this chapter.	Comdr, AMC. Power to redelegate: Hq AMC—Not below a Chief or D. Chief Division, of DoPP, AMC centers and CMR's—not below directorate level. DoPP. Power to redelegate: Chief or D Chief Division, Hq AMC. AMC centers and CMR's—not below directorate level.	Comdr and D Comdr, AMC centers. Power to redelegate: Not below Directorate or comparable level.	Comdr and D Comdr—CMR's. Power to redelegate: Not below Directorate or comparable level.		
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21. Exercise authority of the Secy of the AF with respect to locating nonseverable industrial facilities on land not owned or controlled by the Govt pursuant to § 13.406-1(c) of this title, ICBM and IRBM No. 1 Programs only. Reference: § 1013.406 of this chapter.	Comdr, AMC. Power to redelegate: DoPP and CBMC. DoPP. Power to redelegate: None.	Comdr BMC. Power to redelegate: None.			
22. Terminate and settle contracts. a. Terminate for convenience of the Govt. b. Settle term. Claims and enter into settlement agreements. Reference: §§ 1008.200-50 through 1008.200-54 and § 1008.201.	Comdr, AMC, DoPP and Chief, Contract Management Division. Power to redelegate: Unlimited.	Comdr, AMA's and AF Depots—settlements involving \$2,500 or less. Power to redelegate: Contracting officers. Comdr, AMC centers. Power to redelegate: Contracting officers.	Comdr, AMF's. Power to redelegate: Contracting officers.	Comdrs—\$2,500 or less (as to settlements). Power to redelegate: Contracting officers. Comdr ARDC and Dir of Procurement, Hq ARDC. Power to redelegate: Contracting officers.	Comdrs, oversea commands. Power to redelegate: Comdrs of 1st echelon commands with power to redelegate to contracting officers. Air attachés and Chiefs of AF foreign missions power to redelegate: Contracting officers.

A Subject and reference	B Hq AMC	C AMAs, AF depots, CONUS and AMC centers	D Air materiel forces (AMF) and AMC separate installations	E AF commands CONUS	F AF commands—Overseas air attachés and foreign missions
23. Cancellation for default. Reference: § 1008.650.	Comdr, AMC and DoPP. Power to redelegate: Un- limited. Chief, Contract Manage- ment Division. Power to redelegate: Contract- ing officers specifically designated to perform that function.		Comdr, AMF's. Power to redelegate: Contract- ing officers specifically designated to perform that function. Comdr, Contract Manage- ment Regions. Power to redelegate: Contract- ing officers specifically designated to perform that function within the CMR readjust- ment div.	Director of Procurement, Hq ARDC. Power to redelegate: Equivalent staff officers, ARDC divisions with power to redelegate to contract- ing officers specifically designated to perform that function.	Contracting officers spe- cifically designated to perform that function by their respective com- manders.
25. Establish settlement re- view boards. Reference: § 8.211-1 of this title.	Comdr, AMC and DoPP. Power to redelegate: Un- limited. DDoPP. Chief and Deputy Chief, Contract Management Div. Power to redele- gate: None.		Comdr and D Comdr, AMF. Power to redele- gate: None.		Comdr and V Comdr, overseas commands. Pow- er to redelegate: None.
26. Establish property dis- posal review boards. Reference: § 8.512-1 of this title.	Comdr, AMC and DoPP. Power to redelegate: Un- limited. DDoPP. Chief and Deputy Chief, Contract Management Div. Power to redele- gate: None.		Comdr and D Comdr, AMF. Power to redele- gate: None.	Comdr and V Comdr, ARDC. Power to redele- gate: DoP—Boards within European Office, ARDC.	Comdr and V Comdr, overseas commands. Pow- er to redelegate: None.
27. Make determination to re- quire payment and per- formance bonds in con- nection with cost-type construction. Reference: § 1010.103-2(c) of this chapter.	Comdr, AMC and DoPP. Power to redelegate: Not below the level of a chief or deputy chief of a Division of the Di- rectorate of Procure- ment and Production. DDoPP and Chief, Pric- ing and Negotiation Div. Power to redele- gate: None.				
37. Process appeals direct to ASBCA. Reference: § 1001.314-56.	Comdr, AMC. Power to redelegate: Unlimited. Staff judge advocate. Power to redelegate: Unlimited.				
39. Approve repricing actions. Reference: § 1001.457(b).	DoPP and DDoPP. Power to redelegate: Unlimited.	Comdr, AMAs and Day- ton AF Depot as stated in § 1001.457(b)(1)(ii)(a). Power to redelegate: DoPP. Comdr, AMC centers as stated in § 1001.457(b)(1) (ii)(c). Power to redele- gate: Unlimited.	Comdr, AMFs, as stated in § 1001.457(b)(1)(ii)(d). Power to redelegate: DoPP level. Comdr, 2709th AF Vehicle Control Group, as stated in § 1001.457(b)(1)(ii)(e). Power to redelegate: Chief, Procurement and Production Div.	Comdr, ARDC, as stated in § 1001.457(b)(1)(ii)(b). Power to redelegate: Unlimited.	
40. Priorities authority—DO ratings, DX programs, and scheduling. Refer- ence: § 1001.460.	Comdr, AMC and DoPP. Power to redelegate: Unlimited.	Through successive eche- lons of command to con- tracting officers as stated in § 1001.460(a)(1)(i), (ii), and (iii). Power to redelegate: None. CASC, as stated in § 1001.460(a)(1)(i) through (vi). Power to redele- gate: Unlimited.	Through successive eche- lons of command to con- tracting officers as stated in § 1001.460(a)(1)(i), (ii), and (iii). Power to redelegate: None.	Through successive eche- lons of command to con- tracting officers as stated in § 1001.460(a)(1)(i), (ii), and (iii). Power to redelegate: None.	Through successive eche- lons of command to con- tracting officers as stated in § 1001.460(a)(1)(i), (ii), and (iii). Power to redelegate: None.

Subpart F—Debarred, Ineligible and Suspended Bidders

§ 1001.651-2 [Deletion]

Delete § 1001.651-2.

Subpart G—Small Business Concerns

§§ 1001.702 and 1001.703 [Deletion]

1. Delete §§ 1001.702 and 1001.703.
2. Revise § 1001.704-3 to read as
follows:

§ 1001.704-3 Small business specialists.

Small business specialists are assigned
to AMC field procurement activities,
AMC contract management regions, air

procurement districts or AFPRO's, Air
procurement offices, ARDC centers and
divisions, AF development field offices
designated by Hq ARDC, and base pro-
curement activities of all major com-
mands in the United States. The chiefs
of the small business offices at AMC field
procurement activities will be appointed
in writing by the head of the purchasing
activity. The chiefs of small business
offices at AMC contract management
regions will be appointed in writing by
the commander of the region. The
chiefs of small business offices in APD's
will be appointed in writing by the chief
of the APD. The chief of each air pro-
curement office will designate an indi-

vidual as the small business specialist to
carry out small business functions as-
signed to the office. The chiefs of small
business offices that may be established
in AFPRO's will be appointed in writing
by the AFPR. Small business specialists
assigned to ARDC centers and divisions
will be appointed in writing by the center
or division director of procurement.
Small business specialists assigned to
AF development field offices will be
appointed in writing by the Director of
Procurement, Hq ARDC. Small busi-
ness specialists will be appointed by the
head of the purchasing office at each
base procurement activity of all major
commands within the scope of this sub-

part, other than AMC and ARDC. Small business specialists will: (a) Be responsible directly to the appointing authority, (b) serve as advisors to the appointing authority on matters pertaining to small business, and (c) be the focal point within the installations to which they are assigned on matters pertaining to small business. In addition to performing functions as indicated in subparagraphs (1) through (6) of this paragraph, small business specialists assigned to purchasing offices will review any reports, including DD Form 350, "Individual Procurement Action Report," concerning small business which originate at the purchasing office prior to submission of the reports to Hq AMC.

(1) *AMC field procurement activities.* Small business specialists assigned to AMC field procurement activities will assure the accomplishment of the following procedures on all individual procurement actions which are expected to involve an expenditure of \$10,000 or more. The same procedures may be applied to individual procurement actions that are not expected to exceed \$10,000 if the head of the purchasing activity approves.

(i) Procurement personnel will notify the small business specialists if, prior to the initiation of purchase requests, planning conferences are held for the purpose of considering potential sources for future procurements. At such discussions, potential sources suggested by the small business specialist will be given the same consideration as other potential sources that may be considered.

(ii) Buyers will coordinate with the small business specialist prior to the preparation of IFBs or RFPs. The buyer will furnish the small business specialist with a copy of the appropriate bidders mailing list. To assure that small concerns will be given adequate consideration (see § 1.702 of this title), the small business specialist may make recommendations concerning the procurement plan and will add names of small concerns to be solicited if he considers it is necessary. If an SBA representative has been assigned to the installation and has notified the small business specialist that he may wish to make recommendations in connection with the particular procurement under consideration, he may participate if available at the time of the coordination conference and will be furnished all available information upon which to base recommendations.

(iii) AFPI Form 46, "Small Business Coordination Record," will be completed and signed by the buyer and the small business specialist as evidence that coordination has been accomplished. The description of the supplies or services being procured will be entered in Item 7c, AFPI Form 46, when the procurement is to be synopsis (see § 1.1003-4 of this title). On such procurements a copy of AFPI Form 46 will be furnished to the unit responsible for transmittal of such information to the Department of Commerce. A signed copy of AFPI Form 46 will be furnished to the buyer and will become a permanent part of the procurement file for the information of authori-

ties responsible for review and approval of contracts. Small business office records are filed by PR number rather than IFB/RFP number or contract number and AFPI Form 46C, "Small Business Cross Reference Card," will be used as a cross reference file.

(iv) If circumstances develop following this coordination meeting, but prior to the award of the contract, which make it necessary to deviate from the coordinated procurement plan the buyer will notify the small business specialist. If the small business specialist and the buyer do not reach agreement as to the method of handling the procurement at the coordination meeting, or if they can not agree to a deviation subsequently proposed by the buyer, a decision by the Director of Contract Support, AMCASC, or by the director of procurement/production at other AMC field procurement activities will be final.

(v) A copy of the abstract of bids or proposals will be furnished to the small business specialist and will serve as a guide in handling future procurements for the same supplies or services.

(vi) When award is to be made based on an engineering or laboratory evaluation such evaluation will be made available for the information of the small business specialist.

(2) *AMC contract management regions.* Small business specialists assigned to AMC contract management regions will:

(i) Exercise staff supervision over small business functions assigned to APD's and AFPRO's under the jurisdiction of the region.

(ii) Keep the commander of the CMR advised as to the effectiveness of the APD's and AFPRO's in their conduct of assigned small business functions.

(iii) Advise the commander of the CMR as to the impact of small business policies formulated by higher authority within DOD. He will also advise the commander of the effect on the over-all mission of the CMR of small business policies and procedures established by other Government agencies.

(iv) Provide guidance and assistance to contractors and contractor's representatives on problems relative to doing business with the Air Force.

(v) Represent the commander in relations with other Government agencies and civic organizations concerned with small business.

(vi) Carry out assigned responsibilities and monitor, for the Commander, DOD Industrial Assistance Events Program insofar as requests for exhibits or conferences are received from organizations within the boundaries of the region.

(3) *Air procurement districts and AF plant representatives offices.* Small business specialists assigned to APD's and AFPRO's will perform functions which will include the following:

(i) Advising the chief of the APD or the AFPR directly on all small business matters, and reporting directly to the chief or the AFPR any instances in which it appears a small concern is not receiving equitable treatment.

(ii) Maintaining liaison with other Federal, State, and local agencies and

civic organizations with respect to small business matters.

(iii) Surveillance of Defense Subcontracting Small Business Programs which have been established by contractors within the geographical boundaries of the APD or the AFPRO (see §§ 1001.707-3 and 1001.707-4). The small business specialist will assist contractors in establishing as a part of their purchasing system an Air Force-Industry Small Business Program as described in § 1001.707-50.

(iv) Keeping current data on the existence and capabilities of small business concerns and on the subcontracting requirements of large defense prime contractors and major subcontractors within the boundaries of the APD or AFPRO. Such data will be made available to PCO's when advice and assistance is requested in connection with a contractor's "make or buy" program.

(v) Assisting small concerns to participate either as prime contractors or subcontractors in AF procurement. In this connection the small business specialist will process applications for bidders mailing list according to § 1016.810-50 of this chapter, and maintain information on current procurements (IFBs and RFPs).

(vi) Coordination on requests for facilities expansion. (See § 1013.2402(n) of this chapter.)

(vii) Participate in FCR review board meetings when an FCR on a small business concern is under consideration.

(viii) Carry out assigned responsibilities in connection with DOD Industrial Assistance Events Program.

(4) *Air procurement offices.* Small business specialists assigned to APO's will carry out the small business functions that are assigned to the office.

(5) *ARDC.* Small business specialists assigned to ARDC divisions, centers and AF development field officers will carry out procedures established by Hq ARDC in implementation of AF small business policy.

(6) *Base procurement offices.* Small business specialists assigned to base procurement activities will carry out procedures established by their command headquarters in implementation of AF small business policy and will be the focal point within the installation for matters pertaining to small business.

3. Revise § 1001.705-6 to read as follows:

§ 1001.705-6 Certificates of competency.

(a) When a certificate of competency is issued by SBA and the contracting officer has substantial doubt as to the certified firm's ability to perform he will refer the case with all pertinent information, in duplicate, outlining reason for substantial doubt, and indication of the degree or urgency, to Hq AMC (MCPM), for review prior to award. If, following review, Hq AMC concurs in the position of the contracting officer and doubts the ability of the firm to perform in strict accordance with the particular procurement requirements, the case and all pertinent documents, including Hq AMC concurrence and recommendation will

be forwarded to the Director of Procurement and Production, DCS/M, Hq USAF.

(b)(1) When a Facility Capability Report (see § 1052.100 of this chapter) or a Special Source Survey (see § 1052.300 of this chapter) on a small business firm or a small business pool (see § 1.302-3 of this title) is negative as to capacity or credit and notification to SBA is required by § 1.705-6(b) of this title the procedures in Subpart A, Part 1052 of this chapter will be followed except for airlift or CRAF procurement by Hq MATS when Special Surveys are conducted in lieu of FCRs. Hq MATS will be responsible for giving appropriate SBA regional office opportunity to certify as to "capacity" or "credit" when the report is on a small business concern and the answer to questions corresponding to "One" or "Two" of the FCR is negative and the other questions are affirmative or not applicable.

(2) When no Facility Capability Report or Special Source Survey has been utilized and a small business firm or small business pool is being disqualified on a procurement due to insufficient capacity or credit (regardless of whether this action was taken by an evaluation board or arrived at independently by the contracting officer), the contracting officer must, upon receipt of such decision, furnish the AF small business specialist in the appropriate APD, air procurement office, or AFPRO all the information on which the disqualification was based. To assist the AF small business specialist in his transmittal to SBA in the same manner as when a negative FCR is received, this should include all the technical and financial information available. After furnishing the AF small business specialist with the required information, the contracting officer will follow the same procedures as if the negative determination had been based on a Facility Capability Report.

(3) If the contracting officer and the local SBA representative disagree as to whether a small business concern's unsatisfactory record of performance is attributable solely to a lack of capacity or credit the contracting officer will refer the matter with all pertinent information to AMC (MCPM), for decision.

(c) See § 1.705-6(c) of this title.

§ 1001.705-7 [Amendment]

4. In § 1001.705-7, the symbol "(MCP)" is amended to read "(MCPM)."

5. Sections 1001.706-1 to 1001.706-5, 1001.707-3 and 1001.707-4 are revised to read as follows:

§ 1001.706-1 General.

Items subject to "set-aside" under small business procedures will not be included on the same IFB or RFP with items not subject to "set-aside".

§ 1001.706-2 Review of SBA set-aside proposals.

(a)(1) If the contracting officer is notified that the Administrator of SBA has taken an appeal to the Secretary, the head of the purchasing activity will forward two copies of all pertinent docu-

ments and justification for his decision to Hq USAF (AFMPP-SB).

(2) through paragraph (c) See § 1.706-2 (a) (2) through (c) of this title.

§ 1001.706-3 Withdrawal or modification of set-asides.

(a) See § 1.706-3(a) of this title.

(b)(1) If the contracting officer is notified that the Administrator of SBA has taken an appeal to the Secretary, the head of the purchasing activity will forward two copies of all pertinent documents and justification for his decision to Hq USAF (AFMPP-SB).

(2) and (3) See § 1.706-3(b) (2) and (3) of this title.

§ 1001.706-4 Reporting for Department of Commerce Procurement Synopsis.

See § 21.1003-4 of this title.

§ 1001.706-5 Total set-asides.

(a)(1) *Central procurement.* As to central procurement (distinguished from base procurement) which is accomplished at AMC field procurement activities, every procurement will be set aside either totally or partially for competition solely among small business concerns if records of previous procurements for the same item or the same service disclose that three or more small business concerns submitted responsive bids that were considered fair and reasonable. However, a partial set-aside may be appropriate where only two small business concerns appear to have the technical competence and productive capacity to furnish a portion of the procurement (see § 1.706-6(a) of this title). Deviations from this policy may be approved in specific cases at AMC centers by the chief of the division responsible for the procurement or his designee. At other AMC field procurement activities, deviations may be approved in specific cases by the director of procurement and production or his designee. The procurement file will contain a record of the approval of such deviation.

(2) *Base procurement.* (i) Base procurement, except proposed procurements for construction, in excess of \$2,500 for which there are known to be two or more small business sources from whom fair and reasonable prices may be expected will be set-aside totally for competition among small business concerns exclusively. Deviations from this policy may be approved in specific cases by notation on the purchase request or other authorized requisition by the chief of the contracting office or his designee provided the designee is not the contracting officer or buyer for the particular procurement.

(ii) All proposed procurements for construction (except Capehart Housing Construction, see subparagraph (2) (iv) of this paragraph, in excess of \$2,500 and under \$500,000 including those for repair, maintenance, and alterations of structures will be individual total small business set-asides and such action will be considered as having been initiated by the SBA and reported as joint small business set-asides and such action will be for proposed construction procurements does not preclude the requirement of meeting the criteria for total set-

asides as stated in subparagraph (2) (iv) of this paragraph for other base procurements. If this criteria is not met the procedures to be followed relative to disapproval, withdrawal, modification, or appeal of the set-aside will be according to § 1.706-2(a) (1) and (2), and § 1.706-3(b) (1), (2) and (3) of this title.

(iii) Proposed procurements for construction, amounting to \$500,000 or more, will be considered on an individual procurement basis according to §§ 1.706-1 and 1.706-5(a) of this title.

(iv) Proposed procurements for Capehart Housing construction are not subject to unilateral set-asides procedures and set-asides will not be agreed to by the contracting officer if initiated by the SBA. Appeal procedures according to § 1.706-2(a) (1) and (2) of this title will be followed. The foregoing applies to both on-site and off-site Capehart-Rains projects.

(v) At bases where new family housing construction projects, other than Capehart-Rains, or family housing repair projects are to be constructed, the procedure below will be followed: if a unilateral set-aside on a housing procurement is being considered according to this section or if an SBA representative initiates a joint set-aside on a housing procurement of \$500,000 or more (subparagraph (2) (iii) of this paragraph) prior to agreeing or disagreeing to such action the contracting officer will advise USAF (AFOCE-H). SBA set-asides of housing procurement of \$500,000 or less will be processed according to outstanding instructions without advising USAF (AFOCE-H).

(3) The provisions of subparagraphs (1) and (2) of this paragraph are not intended to limit the authority of SBA representatives, as set forth in §§ 1.705 and 1.706 of this title, to recommend set-asides and to appeal from the contracting officer's disapproval of such recommendations.

(b) Small Business Restricted Advertising will be considered the normal method of procurement with competitive negotiation to be used only where the contracting officer has determined that small business restricted advertising cannot be used. The contract file will be documented to support this determination.

(c) See § 1.706-5(c) of this title.

§ 1001.707-3 Defense subcontracting in small business programs.

Small business specialists at APDs and AFPROs will maintain current information as to contractors within the geographical boundaries of the APD/AFPRO whose contracts contain the clause set forth in § 7.104-22 of this title.

(a) through (e) See § 1.707-3 (a) through (e) of this title.

(f) When a contractor has established a "Defense Subcontracting Small Business Program" according to § 1.707-3 of this title, and it has been determined according to § 1.707-4 of this title and § 1001.707-4 that the Air Force has responsibility for reviewing the contractor's program, the small business specialist in the appropriate APD or AFPRO will make reporting arrangements with

the contractor, i.e., for the submission of semiannual reports on DD Form 1140 "Semiannual Report of Participating Companies" (Budget Bureau No. 22-R163.3, expires December 31, 1964) through the ACO to the small business specialist. The small business specialist will enter in the space between the form number and the general instructions on the face of all DD Forms 1140, the three digit Department of Defense procurement (claimant) code of the principal kind of military items or services being supplied by the reporting unit. After assuring the completeness of the reports, three copies of the completed DD Form 1140 received from each reporting unit will be forwarded by the APD or AFPRO to AMC (MCP-6), the July through December 6-month report will be forwarded to reach Hq AMC no later than March 5th and the January through June 6-month report will be forwarded to reach Hq AMC no later than September 5th. AMC (MCP-6) will assign to each reporting contractor a permanent reporting unit identification number to be entered in item 6a of DD Form 1140 prior to the submission of the report to Hq AMC.

**§ 1001.707-4 Responsibility for review-
ing subcontracting program.**

(a) If § 1.707-4(a) and (b) of this title are not applicable, request according to § 1.707-4(c) of this title will be made by the small business specialist at the APD or the AFPRO to AMC (MCP-6).

(b) When the Purchase Methods Analyst (PMA) notifies the appropriate AF small business specialist according to § 1003.903-3(a) (4) of this chapter that an initial or follow-up survey of a contractor's purchasing system will be made, the following will apply:

(1) If the survey is to be conducted in a contractor's division or plant for which the Air Force is assigned responsibility according to § 1.707-4 of this title, the small business specialist and the purchase method analyst (PMA) will concurrently survey the program established by the contractor in compliance with the Defense Subcontracting Small Business Program clause in the contract as set forth in § 7.104-22 of this title. Particular attention will be given to the methods established to comply specifically with (a) (ii) and (iii) of the clause. If the contractor has adopted the program described in § 1001.707-50, or has established procedures for accomplishing equivalent results, a spot check of individual purchase actions will be made by the small business specialist. A consolidated report of such purchase actions which the contractor may maintain will not necessarily reflect the extent of the contractors implementation of paragraphs (a) (ii) and (iii) of the clause in the contract as set forth in § 7.104-22 of this title. The small business specialist will furnish the PMA a report in narrative form which will reflect his determination as to the adequacy of the contractor's Defense Subcontracting Small Business Program. The report will be in sufficient detail to establish the basis for the determination made by the small business specialist. A copy of the

small business specialist's narrative report will be furnished by the small business specialist to AFMC (MCP-6) through the appropriate contract management region. The small business specialist's narrative report will be the basis of the comments of the PMA in the survey report (see § 1003.903-3 of this chapter) as to the adequacy of contractors implementation of the Defense Subcontracting Small Business Program clause in the contract.

(2) If the survey of the contractor's purchasing system is to be made in a contractor's division or plant for which another Military Department is assigned responsibility according to § 1.707-4 of this title, the AF small business specialist will request the cognizant Military Department to furnish him a determination as to whether the contractor has adequately implemented the "Defense Subcontracting Small Business Program" clause in the contract. The AF small business specialist will furnish the

PMA a copy of the determination received from the cognizant Military Department with his own comments as deemed appropriate.

6. Add § 1001.707-50 as follows:

**§ 1001.707-50 Air Force—industry
small business program.**

Specifically and only as to contractors whose Defense Subcontracting Small Business Programs are within AF responsibility for review and determination of adequacy (see § 1.707-4 of this title), the ACO will call the contractor's attention to formats as shown in the following Figures 1 and 2 which have been approved by the Bureau of the Budget (BOB No. 21-R.183) according to the Federal Reports Act of 1942, and inform the contractor that his use of these formats and making them available for review and appraisal by the ACO upon request would provide a ready means for determining the extent to which con-

SUGGESTED SMALL BUSINESS CHECKLIST AIR FORCE-INDUSTRY SMALL BUSINESS PROGRAM		BUDGET BUREAU APPROVAL NO. 21-R183 (Expires 31 December 1961)
The information on this checklist is to be recorded by the company buyer immediately upon award of any subcontract or purchase made in the interest of defense contracts held by the company.		
PURCHASE ORDER NO.	AMOUNT (\$)	DATE
1. ☐ AWARD MADE TO SMALL BUSINESS AND AWARD LESS THAN \$10,000 (If checked, no further entries will be made)		
2. AWARD MADE TO SMALL BUSINESS AND AWARD \$10,000 OR MORE, AND:		
A. ☐ 1 OR 2 SMALL BUSINESS COMPANIES SOLICITED		
B. ☐ 3 TO 5 SMALL BUSINESS COMPANIES SOLICITED		
C. ☐ 6 OR MORE SMALL BUSINESS COMPANIES SOLICITED		
3. AWARD MADE TO LARGE BUSINESS AND NO SMALL BUSINESS WAS SOLICITED BECAUSE:		
A. ☐ NO KNOWN SMALL BUSINESS SOURCE		
B. ☐ KNOWN SMALL BUSINESS SOURCES RULED OUT FOR TECHNICAL, QUALITY, DELIVERY OR OTHER JUSTIFIABLE REASONS		
C. ☐ THIS IS ADDITIONAL FUNDING ON MAJOR SUBASSEMBLIES		
D. ☐ FOLLOW-ON BUSINESS		
4. AWARD MADE TO LARGE BUSINESS AND THE FOLLOWING NUMBER OF SMALL BUSINESS CONCERNS WERE SOLICITED:		
A. ☐ 1 OR 2		
B. ☐ 3 TO 5		
C. ☐ 6 OR MORE		
5. SMALL BUSINESS CONCERNS WERE SOLICITED AND AWARD WAS MADE TO LARGE BUSINESS BECAUSE:		
A. ☐ NO BIDS RECEIVED FROM SMALL BUSINESS		
B. ☐ SMALL BUSINESS BIDS NOT COMPETITIVE		
C. ☐ SMALL BUSINESS BID WAS LOW BUT DISQUALIFIED FOR AUTHORIZED REASONS		
BUYER'S SIGNATURE		

FIGURE 1.

SUGGESTED QUARTERLY REPORT OF SMALL BUSINESS SUBCONTRACTING AIR FORCE-INDUSTRY SMALL BUSINESS PROGRAM		BUDGET BUREAU APPROVAL NO. 21-R183 (Expires 31 December 1961)	
TO:		FROM:	
1. DATE OF REPORT		2. PERIOD OF REPORT (Check one) CALENDAR YEAR ☐ JAN THRU MAR ☐ APR THRU JUN ☐ JUL THRU SEP ☐ OCT THRU DEC	
3. THE FOLLOWING STATISTICS WERE DEVELOPED FROM PROCUREMENTS MADE IN THE INTEREST OF ALL DEFENSE WORK BEING PERFORMED BY THIS ☐ PLANT ☐ DIVISION ☐ COMPANY			
		NUMBER	VALUE (\$)
4. AWARDS TO SMALL BUSINESS			
A. NUMBER AND VALUE OF PURCHASES OF LESS THAN \$10,000 AWARDED TO SMALL BUSINESS			
B. NUMBER AND VALUE OF PURCHASES OF \$10,000 OR MORE AWARDED TO SMALL BUSINESS AND:			
(1) 1 OR 2 SMALL BUSINESS FIRMS SOLICITED			
(2) 3 TO 5 SMALL BUSINESS FIRMS SOLICITED			
(3) 6 OR MORE SMALL BUSINESS FIRMS SOLICITED			
(4) TOTAL IN THIS CATEGORY			
5. AWARDS TO LARGE BUSINESS			
A. NUMBER AND VALUE OF PURCHASES ON WHICH SMALL BUSINESS FIRMS WERE NOT SOLICITED BECAUSE:			
(1) NO KNOWN SMALL BUSINESS SOURCES			
(2) KNOWN SMALL BUSINESS SOURCES RULED OUT FOR TECHNICAL, QUALITY, DELIVERY OR OTHER JUSTIFIABLE REASONS			
(3) THIS IS ADDITIONAL FUNDING ON MAJOR SUBASSEMBLIES			
(4) FOLLOW-ON PROCUREMENTS			
(5) TOTAL IN THIS CATEGORY			
B. NUMBER AND VALUE OF PURCHASES FROM LARGE BUSINESS ON WHICH SMALL BUSINESS FIRMS WERE SOLICITED			
(1) 1 OR 2 SOLICITED			
(2) 3 TO 5 SOLICITED			
(3) 6 OR MORE SOLICITED			
(4) TOTAL IN THIS CATEGORY			
C. PURCHASES IN 5B ABOVE AWARDED TO LARGE BUSINESS BECAUSE:			
(1) NO SMALL BUSINESS FIRM BID			
(2) SMALL BUSINESS BIDS NOT LOW			
(3) SMALL BUSINESS BID LOW BUT DISQUALIFIED FOR JUSTIFIABLE REASONS			
(4) TOTAL IN THIS CATEGORY			

FIGURE 2.

sideration is given to small business concerns. The contractor is authorized to reproduce the formats for his own use. The contractor's use of these formats will not be made a requirement by the ACO. Contractors who accept the use of these formats may discontinue such use at their own discretion at any time or upon a determination by the ACO that the objectives of the program are being achieved in consideration of the type, volume and timing of the work, and the extent of opportunity afforded small business to participate.

§§ 1001.750 and 1001.750-1 [Deletion]

7. Delete §§ 1001.750 and 1001.750-1.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1002—PROCUREMENT BY FORMAL ADVERTISING

Subpart B—Solicitation of Bids

In § 1002.201(a), subdivision (xiv) is revised; in paragraph (b), subdivisions (vii) to (ix) are deleted and the following are inserted therefor:

§ 1002.201 Preparation of invitations for bids.

* * * * *

(a) * * *

(17) * * *

(xiv) Notification of synopsis. See § 1.1003-8 of this title.

* * * * *

(b) * * *

(21) * * *

(vii) Data requirements. See § 1009-202-1(a) of this chapter.

(viii) Descriptive identification data. See § 1007.4041 of this chapter.

Subpart D—Opening of Bids and Award of Contract

1. Add §§ 1002.407-8 and 1002.407-9 as follows:

§ 1002.407-8 Purchases of patented items when a patent indemnity clause is to be included in the contract.

See § 2.407-8 of this title.

§ 1002.407-9 Protests against award.

(a) General. See § 2.407-9(a) of this title.

(b) Protests before award. See § 2.407-9(b) of this title.

(1) See § 2.407-9(b)(1) of this title.

(2) See § 2.407-9(b)(2) of this title.

(i) If the written protest is received within the required time, the contracting officer will investigate the matter and decide whether the protest is, in his opinion, valid. It is the responsibility of the contracting officer in the first instance to decide, whenever possible, with the concurrence or advice of the local staff judge advocate, if necessary, whether the protest has any valid basis, and to take appropriate action on the protest. If his conclusion is affirmative, he will take necessary action to rectify the erroneous action. If his conclusion is negative or if he deems it desirable to obtain the views of the Office of Comptroller General, the contracting officer will make a written statement of his opinion in the matter, supported by copies of all pertinent papers. The contracting officer will submit the protest and statement through AMC (MCP) to Hq USAF (AFMPP-PR-3) for decision. The letter of transmittal should be forwarded by the most expeditious means and marked "Immediate Action-Protest Before Award". The letter of transmittal will include the following:

(a) Copy of the IFB or RFP.

(b) Copy of abstract of bids or proposals received.

(c) Copy of the low bid or proposal or copy of the bid or proposal of the successful bidder to whom award has been made or is proposed to be made.

(d) Copy of bid or proposal submitted by protestant, if any.

(e) Current status of award or contract, if award has been made, showing whether award action has been suspended or stop work order issued.

(f) Contracting officer's statement of facts and circumstances. The contracting officer will discuss the merits of the protest and support evaluation thereof by citations from appropriate ASFR or AFPI provisions or other authority.

(g) Contracting officer's conclusions and recommendations will be included and will be based upon the material discussed in the report. All facts brought out in the report will be supported by documentary evidence and will be included with the file and referenced in the report.

(h) The file will be assembled in an orderly fashion and will include an index of inclosures. Inclosures will be tabbed in alphabetical sequence.

Submission of protests to Hq USAF under this section may be dispensed with by the contracting officer if he is satis-

fied that the protest is without any reasonable degree of foundation or that it was made solely to obstruct and hinder the contracting officer or otherwise successful bidder. In such case except as modified in subdivisions (ii) and (iii) of this subparagraph, the contracting officer on his own responsibility, or after asking such advice as he may desire, may disallow the protest. In such case, the contracting officer should reply to the protester in writing making a timely and complete answer to the allegations of the protesting bidder. A copy of the correspondence and explanatory remarks will be forwarded to AMC (MCP) for information.

(ii) Where it is known that a protest against the making of an award has been lodged directly with the Comptroller General, a determination by the contracting officer to make award under § 2.407-9(b)(3) of this title must be approved by the director or deputy director of procurement and production at AMC field procurement activities (Director or Deputy Director of Contract Support at AMCASC) or at a level higher than the contracting officer at base procurement activities.

(iii) Notices of intent to make awards will be furnished to Hq USAF (AFMPP-PR-3) for forwarding to the Comptroller General. A copy of the notice of intent will be sent to AMC (MCP). Hq USAF will advise the contracting officer forwarding the notice of intent of the current status of his case with the Comptroller General.

(3) See § 2.407-9(b)(3) of this title.

(c) *Protests after award.* All protests after award will be processed to Hq USAF (AFMPP-PR-3) through AMC (MCP). The letter of transmittal will include the material listed in paragraph (b)(2)(i) of this section.

(d) *Protests against negotiated procurements.* Protests before or after award involving negotiated procurements will be processed according to the above procedures only when requested by Hq AMC or Hq USAF. Normally these protests will be handled by the procuring activity.

§ 1002.407-50 [Deletion]

2. Delete § 1002.407-50.

Subpart E—Two-Step Formal Advertising

A new Subpart E is added as follows:

Sec.
1002.500 Applicability of subpart.
1002.502 Conditions of use.
1002.503 Procedures.
1002.503-1 Step one.

AUTHORITY: §§ 1002.500 to 1002.503-1 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 1002.500 Applicability of subpart.

This subpart applies to procurements accomplished by AMC field procurement activities.

§ 1002.502 Conditions of use.

(a) to (d) See § 2.502 (a) to (d) of this title.

(e) A production contract is contemplated as distinguished from a contract that would require development to advance the state of the art to meet AF requirements.

§ 1002.503 Procedures.

§ 1002.503-1 Step one.

It is necessary to obtain concurrence of the cognizant engineering activity before using this procedure. If the engineering activity concurs in using the two-step procedure, it will specifically state in writing the detailed requirements for the technical proposal to give all bidders an equal opportunity to submit the required data. The engineering activity will furnish to the buyer the criteria for technical proposals, cutoff date for receipt of technical proposals, and anticipated date evaluation of technical proposals will be completed. If the engineering activity does not concur in using this procedure for the procurement under consideration, the nonconcurrence will be signed at the level of the Chief of the Laboratory, or comparable level, and will be considered a final determination not to use this procedure. The reasons cited in the nonconcurrence will be considered in determining an alternate method of procurement.

(a) *Request for technical proposals.* The letter request for technical proposals will be identified as "Letter Request for Technical Proposals (add applicable purchase request number)." The IFB resulting from the request for technical proposals will be numbered in the normal manner. Distribution of request for technical proposals and data will be according to § 1001.1002-51(a) of this chapter.

(b) *Receipt and evaluation of technical proposals.* (1) to (3) See § 2.503-1(b)(1) to (3).

(4) Technical evaluation will be accomplished as set forth in joint AMCR 84-19/ARDCR 11-16. The engineering activity will submit recommendations to the buyer for negotiations with firms which submitted marginal proposals.

(5) Following any negotiations with the bidders, the engineering activity will give the buyer its final evaluation of each of the technical proposals. Acceptable proposals will be so designated. For unacceptable proposals, the engineering activity will give complete and detailed reasons why the proposal is not acceptable. Technical evaluations listing proposals which are unacceptable must clearly state whether rejection is based on the failure of the firm to furnish sufficient information or because of an unacceptable engineering approach. If the rejection is because of missing information, the evaluating activity must state specifically what information was not furnished. These evaluations are recommendations only and must be approved by the contracting officer, as selection of sources is his responsibility. However, any differences of opinion between the contracting officer and the engineering activity must be mutually resolved or decision will be made in writing by the chief or deputy chief of the buying division, of the AMC pro-

curement activities, following discussion with the chief of the cognizant engineering activity.

(c) *Discontinuance.* See § 2.503-1(c) of this title.

(d) *Late technical proposals.* If technical proposals are received after the submission cutoff date, the contracting officer will refer a written recommended course of action to the appropriate officer listed in § 1003.804-2(b)(1) of this chapter for final decision.

Subpart U—Procedures for Two-Step Formal Advertising

Subpart U is deleted.

PART 1003—PROCUREMENT BY NEGOTIATION

Subpart A—Use of Negotiation

1. Add § 1003.101-50 as follows:

§ 1003.101-50 Requests for proposals (RFPs).

Requests for proposals will contain language, terms, and conditions necessary to obtain from prospective contractors the information needed to consider the appropriate factors set forth in § 3.101 of this title. Further, RFPs will:

(a) Contain the special provision in § 9.110(a)(2)(i) of this title on "Royalty Information" when conditions set forth therein are applicable.

(b) Contain the following clause when a pre-award survey is contemplated as prescribed in Subpart I, Part 1 of this title: "Offeror represents that the estimated percentage of subcontracting contemplated on this procurement is ---- percent."

NOTE: The "percentage of subcontracting" will be reported as a percentage of the prime contractors' selling price.

(c) Where the value of the competitive procurement is estimated to exceed \$2,500, allow a minimum time of 30 days for submission of proposals or quotations. When less than 30 days is to be allowed, written authorization will be obtained by the contracting officer from the director or deputy director of procurement and production at AMC field procurement activities (Director or Deputy Director of Contract Support at AMCASC) or the chief or deputy chief of base procurement offices. The contract file will be documented accordingly.

2. Revise § 1003.101-51 to read as follows:

§ 1003.101-51 Verification of the requirement.

During the course of negotiation, the contracting officer will verify the requirement with the initiating office to insure that only required supplies or services are procured. This is particularly important in those circumstances where negotiations have been prolonged, or the description of the item or delivery schedule is changed in negotiation.

§§ 1003.101-52—1003.101-54 [Deletion]

3. Delete §§ 1003.101-52 through 1003.101-54.

4. Add § 1003.104 as follows:

§ 1003.104 Aids to small business in negotiated procurement.

See Subpart G, Part 1 of this title and Subpart G, Part 1001 of this chapter.

§ 1003.105 [Revision]

5. Revise the heading of § 1003.105 to read "Aids to labor surplus area concerns in negotiated procurements." The remainder is unchanged.

6. Delete § 1003.106 through § 1003.106-50 and substitute the following therefor:

§ 1003.106 Award information to unsuccessful offerors.

(a) *Notice to unsuccessful offerors.* See § 3.106(a) of this title.

(b) *Additional information.* Replies pursuant to § 3.106(b) of this title will be signed by the chief or deputy chief of the concerned buying division or office.

(c) *Classified information.* See § 3.106(c) of this title.

§§ 1003.107, 1003.107-1, 1003.108, 1003.109, 1003.109-50, 1003.109-51, 1003.150, 1003.153 and 1003.154 [Deletion]

7. Delete §§ 1003.107 through 1003.154.

8. Add § 1003.110 as follows:

§ 1003.110 Solicitations for informational or planning purposes.

See § 1.309 of this title and § 1001.309 of this chapter.

Subpart B—Circumstances Permitting Negotiation**§§ 1003.201-1 and 1003.201-2 [Deletion]**

1. Delete §§ 1003.201-1 and 1003.201-2.

2. Revise § 1003.201-3 to read as follows:

§ 1003.201-3 Limitation.

(a) Except in connection with contracts of the categories listed in § 3.201-2(b) of this title, the authority of 10 U.S.C. 2304(a)(1) will not be used for:

(1) Increase or decrease of funds obligated on contracts through supplemental agreements or contract amendments issued pursuant to provisioning procedures incorporated in the contract for concurrent spare parts or other accessorial equipment specified to be delivered under the contract.

(2) Supplemental agreements, or contract amendments issued pursuant to contractual provisions relating to increase—decrease quantity options or extras.

(3) Supplemental agreements or contract amendments for concurrent spare parts or other accessorial equipment not originally provided for in the contract.

(4) Orders (which obligate funds) against contracts or agreements upon which funds were not obligated.

(b) The authority of the basic contract will be used for:

(1) Increase or decrease of funds obligated on letter contracts and cost-reimbursement type contracts; provided, such increase or decrease is not the result of a change in the scope of work or quantities to be delivered.

(2) Change orders, supplemental agreements, or contract amendments issued pursuant to contractual provisions relating to changes, changed conditions, price escalation, price redetermination, incentive, termination for convenience, default, taxes, and variation in quantity caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes.

§§ 1003.201-50, 1003.202-2, 1003.203-1—1003.203-3 [Deletion]

3. Delete §§ 1003.201-50, 1003.202-2, 1003.203-1 through 1003.203-3.

4. In § 1003.204-1, revise paragraph (b) to read as follows:

§ 1003.204-1 Authorization.

(b) Department of Defense Appropriations Act, 1961 (Public Law 86-601), states:

SEC. 601. During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty station and return as may be authorized by law: Provided, That such contracts may be renewed annually.

5. In § 1003.204-2, add the following to paragraph (b):

§ 1003.204-2 Application.

(b) *Citation of statutory authorities.* * * * If § 3.206-2 of this title applies to the services being procured, 10 U.S.C. 2304(a)(6) will be used instead of 10 U.S.C. 2304(a)(4).

6. In § 1003.207-2, paragraph (b) is revised to read as follows:

§ 1003.207-2 Application.

(b) For procurements estimated to exceed \$10,000, the requirement for "suitable advance publicity" will be deemed to be complied with if written requests for proposals are circulated to business concerns engaged in manufacture or sale of the supplies involved, including qualified dealers known to have current interest in selling such supplies to the Government.

7. Revise § 1003.208-2 to read as follows:

§ 1003.208-2 Application.

(a) In addition to meeting the requirements set forth in § 3.208-2 of this title, the proposed procurement must concern supplies which are authorized for base procurement by AFR 145-14 (List of Subsistence Supplies Authorized for Issue and Sale in Commissaries and Commissary Stores), AFR 145-11 (Acquisition, Sale, and Stockage of Subsistence Articles), or brand-name items selected by the Superintendent of the

USAF Academy for resale in the Cadet Store.

(b) For procurements estimated to exceed \$10,000, the requirement for "suitable advance publicity" will be deemed to be complied with if written requests for proposals are circulated to business concerns engaged in manufactures or sale of the supplies involved including qualified dealers known to have current interest in selling such supplies to the Government.

8. Delete § 1003.210-2 and substitute the following therefor:

§ 1003.210-2 Application.

The title of § 3.210 of this title, in its implementation of 10 U.S.C. 2304(a)(10), adds the words "by formal advertising". Where more than one source exists, competitive negotiation will be accomplished wherever possible. Application of the circumstances with respect to which the authority may be used is identified by the corresponding paragraph in § 3.210-2 of this title:

(a) "When the supplies or services can be obtained from only one person or firm"—When considering determinations and findings, contracting officers and approving officials will exercise due care before a determination is made that a particular item can be obtained from only one person or firm. Complete sole source substantiation must be included in the determination and finding. Merely citing this authority will not suffice.

(b) [Reserved]

(c) "When bids have been solicited pursuant to the requirements of Section II, and no responsive bid (a responsive bid is any bid which conforms to the essential requirements of the solicitation of bids) has been received from a responsible bidder."—This authority may be used only if the negotiation is for identical requirements of the Invitation for Bids. If specification deviations are authorized or the delivery requirements or quantities are changed, consideration must be given to advertising the revised requirements or negotiating under some other exception.

NOTE: Contracting officer may continue use of advertised forms (Standard Forms 19, 30 or 33) to consummate procurement by negotiation. If Standard Form 30 is used, a Standard Form 26 will be placed with it. The negotiation authority will be cited across the face of Standard Form 19, 26 or 33 as follows: "This negotiated contract is entered into pursuant to the provisions of 10 U.S.C. 2304(a)(10) and any required determination and findings have been made."

(d) to (l) [Reserved]

(m) "When it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the required supplies or services"—This authority will not be used for procurement of any item covered by an approved specification listed in § 1001.1202(a) of this chapter. When full and free competition can be obtained with the specifications, exhibits, or purchase description and award is contemplated to be made to the lowest responsible bidder, the procurement will be formally advertised. Cases of doubt will

be resolved in favor of formal advertising. See § 1003.306(b)(5).

(n) to (p) [Reserved]

9. Revise § 1003.210-3 to read as follows:

§ 1003.210-3 Limitation.

Determinations and findings will set forth the particular reasons why competition by formal advertising is impracticable, and will be approved as provided in § 1003.306(b). With respect to procurements exceeding \$50,000 to be negotiated under the provision of § 3.210-2(m) of this title and § 1003.210-2(m), determinations and findings will be approved as provided in § 1003.306(b)(5).

§ 1003.211-1 [Deletion]

10. Delete § 1003.211-1.

11. Delete § 1003.211-2 and substitute the following therefor:

§ 1003.211-2 Application.

(a) In procurements with more than one phase, where it is anticipated that more than one phase will be performed under the contract, the total estimated cost of the first phase is \$100,000 or less, for a determinations and findings regardless of the fact that the estimated cost of the first phase is \$100,000 or less.

(b) In the case of procurements in which the total estimated cost is over \$100,000 but which are partially financed by amount of \$100,000, or less, the total estimated cost will determine the need for a determinations and findings.

§§ 1003.211-3, 1003.212-3, 1003.214, 1003.214-3 and 1003.215-2 [Deletion]

12. Delete §§ 1003.211-3, 1003.212-3, 1003.214, 1003.214-3 and 1003.215-2.

13. In § 1003.217-2, revise paragraph (c) to read as follows:

§ 1003.217-2 Application.

(c) Procurements negotiated pursuant to section 406 of Title IV of Public Law 345 (84th Congress).

Subpart C—Determinations and Findings

§ 1003.301 [Amendment]

1. In § 1003.301, "Nature of determinations and findings", delete paragraph (a) and the paragraph designation (b), retaining the contents of former paragraph (b).

2. In § 1003.303, revise paragraphs (a), (c), (e) and (g) as follows:

§ 1003.303 Determinations and findings by the head of a procuring activity signing as "a Chief Officer responsible for procurement."

(a) By § 3.303 of this title the Commander, AMC, is authorized to make determinations and findings required by 10 U.S.C. 2307, in support of incentive type and cost-reimbursement type contracts.

(c) The authority vested in the Director of Procurement and Production, Hq AMC, to make determinations and findings supporting the use of cost, cost-

plus-a-fixed-fee, or cost-plus-incentive-fee contract, or a fixed-price incentive contract, has been redelegated to the following, subject to the provisions of paragraph (d) of this section.

(1)-(5) * * *

(e) The Director of Procurement and Production, Hq AMC, has delegated to the Director, Air Force Academy Construction Agency, the authority to make determinations and findings supporting the use of cost and cost-plus-a-fixed-fee type contracts (except those for procurement of items in production quantities), and fixed-price incentive contracts, provided the delegatee is not the contracting officer in the procurement involved.

* * * * *

(g) The Director of Procurement and Production, Hq AMC, has delegated authority to make findings and determinations supporting the use of cost-plus-a-fixed-fee type contracts for procurement of maintenance and overhaul services only to the Commander and Deputy Commander, AMFPA and AMFEA.

3. Revise § 1003.306 as follows:

§ 1003.306 Procedure with respect to determinations and findings.

(a) * * *

(b) *Approval of determinations and findings; negotiated contracts.* Determinations and findings under §§ 3.202 and 3.210 of this title (except § 3.210-2(xiii) for procurements exceeding \$50,000, see subparagraph (5) of this paragraph), requires contracting officer's signature and will be subject to the following written approvals.

(1) to (2) (ii) * * *

(3) Hq ARDC and ARDC centers and divisions.

(i) Chief or deputy chief of buying divisions—procurements initially estimated to be in excess of \$50,000.

(ii) [Deleted]

(4) * * *

(5) Determinations and findings for procurements exceeding \$50,000 to be negotiated under the provisions of § 3.210-2(m) of this title and § 1003.210-2(m) will be approved by the Director, Deputy Directors, or assistant to the Director of Procurement and Production, Hq AMC. Such determinations and findings will be prepared and signed by the contracting officer.

(c) * * *

(d) *AMC procedure for secretarial determinations and findings.* (1) Determinations and findings authorizing negotiation which require signature by the Assistant Secretary of the Air Force will be prepared on plain bond paper, undated, and without signature block. An original and nine carbon copies will be submitted with the letter of transmittal.

(2) Letters of transmittal will be prepared and submitted (an original and four copies) to AMC (MCPC), for review and forwarding to Hq USAF (AFMPP-PR). When considered necessary, these letters will include additional information to show compliance with the applicable Part of Subchapter A, Chapter 1 of this title.

* * * * *

Subpart D—Types of Contracts

Section 1003.406-3 is revised to read as follows:

§ 1003.406-3 Contracts with value engineering incentives.

(a) *Description.* See § 3.406-3 of this title.

(b) *Applicability.* The value engineering incentive provision in paragraphs (d) (1) and (2) of this section will be included in contracts involving the production or modification of supplies where there is reasonable assurance that value engineering may result in reduced contract cost. For development contracts, see paragraph (d) (3) of this section.

(c) *Limitations.* Requests for approval to use a value engineering incentive provision in contracts other than firm fixed price supply contracts (advertised or negotiated) will be submitted to AMC (MCPC). Coordination with the appropriate ARDC agency will be effected before an approval is made by MCPC. Requests will describe the procurement, the reason for having a value engineering incentive provision, and the proposed schedule provisions spelling out the extent of the value engineering program and the percentage of contractor participation in any resulting saving.

(d) *Contract clauses.* (1) According to paragraph (b) of this section, a clause will be included in the schedule of contracts other than firm fixed price supply and development contracts which provides:

(i) That the contractor and to the extent practicable his subcontractors will establish and maintain throughout the term of the contract a value engineering program.

(ii) The nature and extent of the value engineering effort, including the manner in which the contractor will carry out such effort through employment of full-time engineering and other technical personnel, and by internal programs for the development of cost reduction improvements or techniques.

(iii) For the submission of value engineering proposals in the same manner as Engineering Change Proposals, utilizing the ECP format for submission of value engineering proposals through the established ECP review channels for approval.

(iv) The manner in which the price, targets, or fee will be adjusted if value engineering proposals are accepted. In negotiating sharing arrangements under value engineering incentive programs, consideration will be given to the extent to which the contractor assumes the cost of the value engineering effort (direct assumption of the cost by the contractor as distinguished from imposing such cost on the Government) and upon other factors involved. In any event contractor sharing will not exceed 50 percent of the net savings, nor the secretarial or legal limits of the contract including other contract incentives.

(v) That the Government does not have to adopt any value engineering proposal and failure to do so is not subject to the "disputes" clause of the contract.

(2) Firm fixed price supply contracts (advertised and negotiated) in excess of

\$500,000 where there is a reasonable assurance that value engineering studies and the adoption of value engineering proposals during the period of performance may result in reduced contract cost to the Government should contain a clause substantially as set forth in § 1007.4064 of this chapter. This clause encourages, but does not require the contractor to establish a value engineering program. It authorizes, however, equal sharing with the Government of the amount of cost reduction agreed upon. The clause will be inserted in IFBs and RFPs.

(3) *Value engineering in development contracts.* Development contracts in excess of \$500,000 for complex supplies intended for future production where there is reasonable assurance of cost benefit will include a clause which provides that:

(i) The contractor will establish and maintain throughout the term of the contract a value engineering program.

(ii) The nature and extent of the value engineering effort, including the manner in which the contractor will carry out such effort through employment of full-time engineering and other technical personnel, and by internal programs for the development of cost reduction improvements or techniques.

Subpart F—Small Purchases

1. Revise § 1003.605 to read as follows:

§ 1003.605 Order-invoice-voucher method.

Standard Form 44, "Purchase Order-Invoice-Voucher," is available in seven-part, manifold snapout construction with interleaved carbon of light-weight paper which permits preparation by ballpoint pen or indelible pencil as well as typewriter.

§ 1003.605-1 [Deletion]

2. Delete § 1003.605-1.

§ 1003.606-1 [Amendment]

3. In paragraph (b) of § 1003.606-1 amend the amount "\$100" to read "\$250."

§ 1003.606-2 [Amendment]

4. In paragraph (c) of § 1003.606-2 amend the amount "\$100" to read "\$250."

§ 1003.606-3 [Amendment]

5. In § 1003.606-3, a paragraph (a) is added; the existing material is now designated as paragraph (b).

§ 1003.606-3 Conditions for use.

(a) See § 3.606-3(a) of this title.

6. Add § 1003.651-7 as follows:

§ 1003.651-7 U.S. Government national credit card.

Standard Form 149, "U.S. Government National Credit Card," developed by GSA for optional use in obtaining service station deliveries of supplies and services from Federal Supply Schedule Contractors, FSC Group 91, will not be procured or used by AF activities.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

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Subpart H—Price Negotiation Policies and Techniques

Subpart H is deleted and the following substituted therefor:

Sec.	
1003.801	Basic policy.
1003.801-1	General.
1003.801-2	Responsibility of contracting officers.
1003.802	Preparation for negotiation.
1003.802-2	Selection of prospective sources.
1003.802-3	Requests for proposals.
1003.804	Conduct of negotiations.
1003.804-1	General.
1003.804-2	Late proposals.
1003.807	Pricing techniques.
1003.807-4	Cost analysis.
1003.807-5	Subcontracting.
1003.808	Profit or fee.
1003.808-1	General.
1003.808-2	Factors for determining fee or profit.
1003.808-5	Fee limitation for experimental, developmental or research work.
1003.809	Audit as a pricing aid.
1003.810	Exchange of information.
1003.811	Record of price negotiation.
1003.850	Special pricing instructions.
1003.850-1	Pricing of support items.
1003.850-2	Pricing changes to fixed-price and cost-reimbursement type contracts.
1003.850-3	Planning and coordination.
1003.850-4	Packaging costs.
1003.850-5	Pre negotiation conferences and briefings.
1003.850-6	Pricing of fixed-price type maintenance, overhaul, and modification contracts.
1003.850-7	Savings clauses.
1003.850-8	Preproduction or startup costs.
1003.850-9	Contractors' estimating systems.

AUTHORITY: §§ 1003.801 to 1003.850-9 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 1003.801 Basic policy.

§ 1003.801-1 General.

The incentive approach, as distinguished from the incentive contract, will be followed in all negotiations; the opportunity to earn increased profit can be used to motivate contractors to control use of labor, materials, and plant.

§ 1003.801-2 Responsibility of contracting officers.

(a) See § 3.801-2(a) of this title.

(b) (1) Simple and routine requests for pricing assistance will be avoided so that price analysts can be used on more complex procurements. Each procurement activity will establish appropriate controls to assure timely completion of all pricing functions.

(2) All requests for pricing assistance will be specific as to the extent and kind of analysis required and will include all pertinent information. In the most demanding, complex procurement situations, the contracting officer may request the price analyst to lead in negotiation of price and pricing terms.

§ 1003.802 Preparation for negotiation.

§ 1003.802-2 Selection of prospective sources.

See §§ 1003.101-52 and 1003.101-53(d) and Subparts G and H, Part 1 of this

title and Subparts G and H, Part 1001 of this chapter.

§ 1003.802-3 Requests for proposals.

See § 3.802-3 of this title.

§ 1003.804 Conduct of negotiations.

§ 1003.804-1 General.

In scheduling a negotiation conference, contracting officer will give all members of the AF negotiating team as much time as possible for analysis of offeror's (or contractor's) proposal. As a rule, when only local personnel are involved, a minimum of 10 working days between receipt of a proposal and start of negotiations based on that proposal will be allotted for analysis. The contracting officer will adjust this period upward depending upon extent of analysis appropriate for the particular procurement, or whenever other than local personnel are involved. The chief of the procuring activity will see that this principle is observed.

§ 1003.804-2 Late proposals.

(a) See § 3.804-2(a) of this title.

(b) See § 3.804-2(b) of this title.

(1) Research and development procurements are exempt from procedure set forth in this and § 3.804-2(b) (2) of this title. On other procurements contracting officer will send recommendation to the appropriate officer for written decision: (i) Director or deputy director of procurement and production at AMC field procurement activities (other than AMC centers) for contracts to be written by that activity; (ii) commander, or his designee, of AMC centers; (iii) commander of the major air command concerned (or a duly authorized representative not below the level of a staff officer responsible for procurement within the headquarters of the first echelon of command immediately subordinate to the major air command).

(2) See § 3.804-2(b) (2) of this title.

§ 1003.807 Pricing techniques.

§ 1003.807-1 General.

Under fixed-price type contracts, including redeterminable types, prices are to be negotiated, not separate elements of cost plus profit. After thorough analysis of costs, product and prices, bargaining as to price and contract terms will be on the basis of unit or total price; there is no need to reach agreement on each cost element as a prelude to agreeing on the price for the goods or services being bought. This principle also applies to the cost portion of fixed price incentive type contracts where cost is negotiated as an aggregate and profit as a separate applied item.

§ 1003.807-4 Cost analysis.

(a) Extent of analysis required will determine amount and type of information needed; only pertinent and useful information will be requested from contractors. In large dollar or complex procurements, exact types of pertinent supporting information to be submitted will be the subject of agreement

between Air Force and company with ACO the coordinator.

(b) (1) and (2). See § 3.807-4(b) (1) and (2) of this title.

(3) Review will be concentrated on those cost elements that are large in dollar amount or in relationship to total cost. If, as is often the case, material, labor, or both constitute 50 cents or more of the sales dollar, particular attention will be given those cost elements. Bills of material, engineering drawings, process sheets, and like basic information would be useful in many analyses, and this information usually is available to the analyst working with the ACO.

(4) and (5). See § 3.807-4(b) (4) and (5) of this title.

(c) to (d). See § 3.807-4 (c) to (d) of this title.

§ 1003.807-5 Subcontracting.

(a) Major subcontracts pose three interrelated problems: (1) Need to give prime contractor a positive incentive to make first award a sound one in terms of product and price; (2) need to encourage close pricing in sole source or limited competitive situations in follow-on buys; and (3) need to price prime contract at a level consistent with sound subcontract prices. Successful resolution of the third problem is vital to solution of the first two. One way this may be achieved is to negotiate initial prices with prime contractor before he has established firm prices with his major suppliers. To do this properly, ACO will need to give PCO the information contemplated by Subchapter A, Chapter 1 of this title. ACO will use pricing and technical specialists to review prices proposed for major subcontracts. Where appropriate, he also will use audit services provided by either the prime contractor's own auditors or by military audit agencies, depending upon circumstances. To protect the interests of a subcontractor, the contracting officer will use judgment in releasing to prime contractors information received from Department of Defense sources.

(b) See § 3.807-5(b) of this title.

(c) Subchapter A, Chapter 1 of this title anticipates situations when major redeterminable subcontracts will not have been repriced at time revision of prime contract price must be completed. Where it is possible to forecast ultimate prices of those subcontracts with reasonable assurance due to the availability of fairly definite cost data, AF procurement personnel may negotiate firm final prime contract prices. Alternate procedures of Subchapter A, Chapter 1 of this title will be used in those few instances when cost data on major subcontracts will be so indefinite as to preclude reasonable projection of revised subcontract prices. Occasion to use this procedure may come when establishing final prices of FPR-E, FPIF, and FPIS contracts and, conceivably, when establishing firm revised prices under FPR-C and FPR-D contracts.

(d) Requests for subcontract fees in excess of those stated in Subchapter A, Chapter 1 of this title, will be sent to the Secretary through the office of the Procurement Committee (MCPC), Hq AMC.

§ 1003.808 Profit or fee.

§ 1003.808-1 General.

Profit has two important aspects: (a) To induce a contractor to undertake performance of a contract by offering prospect of a monetary gain; and (b) to persuade him to perform more efficiently than he otherwise might by offering him the chance to earn more profit (the incentive approach).

§ 1003.808-2 Factors for determining fee or profit.

Across-the-board profit agreements with a contractor ignore type of contract used and particular procurement situation. Such agreements will not be made.

(a) to (i). See § 3.808-2 (a) to (i) of this title.

§ 1003.808-5 Fee limitation for experimental, developmental or research work.

Approval to exceed the administrative limitations of 10 percent for research and development work, up to the statutory limitation of 15 percent, will be obtained according to § 1003.404-3(c) (2).

§ 1003.809 Audit as a pricing aid.

(a) *General.* See § 3.809(a) of this title.

(b) *Application.* (1) For procedures to be followed when requesting audit assistance, see § 1003.850-3.

(2) Contract management activity (APD/AFPRO) will support auditor's requests to contractor for access to contractor records and data and will be responsible for furnishing auditor's comments or report to procuring activity, except for audit reports covering price revisions where the provisions of AFPI Section III, Part 20 apply. Procuring activity will be responsible for inviting auditor attendance at principal negotiation conferences.

(c) *Conditions for use.* (1) Audit assistance will be requested (i) Prior to the award of a contract to a sole source, or definitization of a letter contract awarded to a sole source, where definitive price negotiations in excess of \$350,000 are contemplated, or (ii) whenever a cost-reimbursement, incentive or redeterminable type contract is contemplated and compatibility of contractor's accounting system with the particular contract type is in doubt. In all other negotiations, the contracting officer (or price analyst reviewing the proposal at the contracting officer's request) will determine the need for requesting audit assistance after evaluation of the entire procurement situation including, but not limited to, the conditions discussed in Subchapter A, Chapter 1 of this title.

(2) See AFPI Section III, Part 20 for conditions pertaining to the use of audit assistance in administration of contracts containing price revision clauses.

§ 1003.810 Exchange of information.

Pricing and Negotiation Division (MCPF), Hq AMC, will be the clearing house within the Air Force for information of a contract pricing nature.

§ 1003.811 Record of price negotiation.

Price negotiation process is divided into two distinct phases. If, as sometimes happens on relatively small dollar competitive procurements, the first phase, preliminary review, fact-finding, and analysis establishes reasonableness of contractor's proposal and makes the second phase, formal price negotiation conference including prenegotiation and review, unnecessary, report will be written at that time by the person who has conducted the analysis and evaluated the facts obtained. If, on the other hand, initial analysis establishes that a formal negotiation conference is necessary, the single pricing report will be written after completion of the conference.

(a) Pricing memoranda prepared by price analysts will be reviewed by a senior pricing supervisor to insure technical sufficiency and general quality of work performed.

(b) Report of analysis or negotiation need not be lengthy. However, it must be sufficiently complete to permit rapid reconstruction of all major considerations of the particular price negotiation. Discussion will be in the following order (where a negotiation conference was not needed, the order may be modified slightly):

(1) Introductory summary showing type of pricing action involved and results.

(2) Particulars and a brief discussion of the procurement situation including brief item description, name and location of contractor, quantities, delivery dates, prices and contract type proposed and agreed upon, date and place of negotiation, names of conferees, and pertinent facts about competitive proposals, previous procurements, requirements, specifications, and production rate. If additional industrial facilities are to be furnished to contractor or existing Government facilities are to be used in contract performance, they should be identified. If contract is of cost-reimbursement type and special treatments for certain type costs were agreed upon, these agreements also should be included. This story can be told in one or several paragraphs and, because report is a summary, it should bring together bits of information otherwise scattered throughout the contract file.

(3) Summary of analysis or negotiations including all significant events that led to agreement upon price and, if a new procurement, type of contract. Extent to which technical specialists were used, and type of cost data developed and its sufficiency for projection purposes should be discussed. Report will discuss not only total price negotiated, but also will summarize the discussion and detailed evaluation of significant price elements in the AF price objective and the relative weight given new information developed in the negotiation.

(c) Reports of cost and price analysis performed by field contract management personnel at PCO's request are used to evaluate contractor's price proposal. Report furnished will include all relevant factors, the facts disclosed by analysis.

use made of these facts, and conclusions reached. However, responsibility for determining reasonableness of price remains with the PCO.

(d) Whenever price analysis support has been furnished by a field contract management activity, procuring activity will insure that copy of price negotiation memorandum is sent to the contract management activity as soon as it is available. Copies of price negotiation memoranda distributed to field contract management activities pursuant to this requirement will be stamped "For Official Use Only (AFR 11-30)." In no event should specifics, such as labor or overhead rates included in the AF negotiation objective, be construed by contract management activities as being automatically approved for use in other negotiations with the contractor involved.

§ 1003.850 Special pricing instructions.

§ 1003.850-1 Pricing of support items.

(a) *General.* By definition, "support items" includes spare parts, modification kits, technical data, ground support equipment, special tools, and test equipment. Where instructions obviously apply only to one of these categories, only that particular group will be cited.

(2) Support items should be bought using firm fixed-price contracts whenever feasible. Considering administrative time and cost of pricing and re-pricing exhibits, this policy is feasible whenever reasonably close prices can be established and contractor's accounting system will permit separate identification of support item cost.

(b) *Techniques.* (1) In general, pricing policies and methods of analyzing contractor's proposals outlined in preceding paragraphs also apply to negotiation of support item prices.

(2) One of the techniques of pricing spare parts and other support item exhibits is the formula technique. These formulas represent a systematic approach to pricing based upon projections of indirect expense and profit rates which are applied to projected material and labor costs to develop unit prices. Contractor relies upon averaging effect of formula application to give it reasonable profit for total productive effort and does not attempt to secure a reasonable profit from sale of each separate item. For this reason, price of any given item may be higher or lower than if a detailed estimate for item had been made.

(c) Support items, particularly spare parts, can be a volume workload, both from number of exhibits, production lists, work requests, etc., that must be reviewed and from number of line items on each document. Beside analysis, each document requires written record of analysis and negotiation. Therefore, ACO will: (1) Write description of method(s) used by contractor to price spare parts and other support items and by AF price analysts and auditors to analyze priced exhibits, (2) negotiate factors with contractor, if formula method is used, and write report of negotiations, (3) clear methods and negotiated factors with local AF management and then with cognizant CMR for understanding,

adequacy, and acceptability and give principal PCOs and cognizant CMR copies of the write-ups, and (4) notify PCOs and cognizant CMR of any changes to methods or factors. Whenever standard analysis methods establish the reasonableness of the contractor's proposed prices, the supporting pricing record need only cite the applicable write-ups and state that standard analysis methods were followed. If the PCO has pricing responsibility, the ACO will, when submitting priced documents to the PCO for final action, include the original of this pricing record and recommend acceptance. If standard analysis methods fail to establish the reasonableness of the contractor's proposed prices, or if circumstances made it necessary to depart from standard methods or to use other factors, the supporting pricing records should include additional detail and support.

§ 1003.850-2 Pricing changes to fixed-price and cost-reimbursement type contracts.

(a) *General.* (1) Only rarely are contract changes made that do not affect the work and therefore the price or estimated cost and fee contemplated by the contract. The term "no cost change" can be a misnomer for a charge or credit will accrue to the Government from most changes.

(2) As a rule, all contract changes will be priced and contract price adjusted within a reasonable and specified time after change is authorized. (See §§ 1054.307 and 1054.308 of this chapter.)

(3) For procedures applicable to engineering changes resulting in termination claims or property disposal, see § 1008.254 of this chapter.

(b) *Responsibility.* See § 1054.307(b) of this chapter. To facilitate PCO evaluation of negotiation results, the ACO will include sufficient support information in his recommendation to indicate extent of the negotiation and to justify proposed actions. If negotiations have not been successful, ACO will send contractor's proposal together with report of findings and ACO's position in the unsuccessful negotiations to the PCO for further negotiation and resolution.

(c) *Procedures.* (1) Dollar value of any change is arrived at by considering the difference between the article or work deleted and the article or work added. Because dollar value of any change will be determined by negotiation with the contractor, tests of reasonableness and equity should guide every time.

(2) Knowledge of contractor's estimating system is of great importance in pricing changes and requirements of § 1003.850-9 will be considered.

(3) Price analyst and auditor will be used in reviewing change proposals as necessary. Every quotation requires some degree of price analysis regardless of dollar value; the degree of price analysis and the need for audit assistance depends upon individual circumstances. The complexity of the change as well as its dollar value are factors governing the need for price analyst or auditor support. Complexity and dollar value, however, cannot be construed to

be the only governing factors since a proposed no-cost change or a seemingly insignificant price adjustment may, in fact, result in a significant price decrease. Adequate review thus requires a knowledge and understanding of product and manufacturing processes involved in production as much as it does a knowledge and understanding of a contractor's cost estimating and accounting procedures.

(4) Evaluation of the profit factors under § 3.808-2 of this title is required when analyzing each change proposal. Profit patterns considered in establishing original negotiation objective will not be accepted automatically when pricing a change.

(d) See § 16.813 of this title for instructions regarding use of DD Form 1107 "Change Order Price Analysis." Exact types of pertinent supporting information to be submitted will be the subject of agreement between Air Force and contractor with ACO the coordinator.

§ 1003.850-3 Planning and coordination.

The team approach to pricing requires adequate planning and coordination to prevent duplication of effort or inadequate analysis.

(a) The following planning and coordination procedures are required prior to PCO award of a contract to a sole source, or definitization of a letter contract awarded to a sole source, where definitive price negotiations in excess of \$350,000 are anticipated. In addition, these procedures are applicable in multi-source procurements or where definitive price negotiations not in excess of \$350,000 are contemplated, provided the PCO (or price analyst) has first determined that the services of technical specialists in field contract management activities or audit field offices is required. Such determination will be made after consideration of the conditions set forth in § 3.809(c) of this title and § 1003.809(c), and evaluation of such other factors as types and availability of cost and pricing data required for analysis, complexity of the procurement, contract type contemplated, and extent of price competition, if any, obtained.

STEP 1: This step applies only to sole source negotiations in excess of \$350,000 (but see Step 2(iii)). Procuring activities will distribute two copies of each request for proposal to the APD/AFPRO. The request for proposal will include instructions that the contractor submit two copies of the proposal to the APD/AFPRO at the same time it furnishes the original proposal to the procuring activity. Upon receipt, the APD/AFPRO will distribute one copy of each request for proposal and of each proposal to the responsible field auditor.

STEP 2: The PCO (or price analyst) will prepare a single, detailed request for analysis support and sent it to the APD/AFPRO.

(i) In sole source negotiations expected to exceed \$350,000, inclusion of a request for audit assistance is mandatory, and an information copy of the request will be furnished to the Auditor General representative at the procuring activity.

(ii) In sole source negotiations under \$350,000 and in multi-source negotiations, one copy each of the request for proposal(s) and the proposal to be analyzed will be

attached to the request. If audit review is requested, an additional copy of each will be attached, and an information copy of the request will be furnished to the Auditor General representative at the procuring activity.

(iii) If a procuring activity negotiates repeatedly with the same source, agreements may be reached with the concerned APD/AFPRO as to types of sole source proposals under \$350,000 requiring field analysis, if any, and the extent and areas of analysis required. Where these agreements exist and are applicable, this Step 2 may be omitted by the PCO unless audit review is desired; however, the procedures in Step 1 will be followed.

STEP 3: Upon receipt of a request for support analysis that includes a request for audit review, the designated representative of the APD chief/AFPR and the auditor will hold a pre-analysis review. This meeting may be as formal or informal as desired. The procurement situation and the procuring activity's request will be discussed and a mutually agreeable approach to analysis determined. If, during pre-analysis review, it is agreed that pertinent information requested by the PCO has been furnished in prior unclassified analysis and audit reports, that this information is still valid, and that neither the APD/AFPRO nor the auditor can contribute any other significant information, the APD/AFPRO representative will advise the PCO accordingly. In such cases, he will advise the PCO that a pre-analysis review was held with the auditor, will reference the earlier reports and, where the earlier reports were prepared for procuring activities other than the requesting activity, attach information copies.

STEP 4: If review of any subcontract cost estimate is necessary during AF field analysis of a prime proposal, efforts will be made by the APD/AFPRO to obtain the required support information from the prime before requesting assist analyses. However, if assist analyses are necessary, requests for and any followups required will be prepared by the APD/AFPRO representative and sent to the APD/AFPRO having cognizance over the subcontractor's facility. If the prime is a sole source and its proposal exceeds \$350,000, or if a requirement for audit review of a subcontract proposal is included in the request for assist analysis, the request will be coordinated with and an information copy furnished to the audit activity located at or responsible for audit of the prime's facility. Upon receipt of a request for assist analysis that includes a request for audit review, the subcontractor's APD/AFPRO and the local auditor will follow the procedure outlined in Step 3.

(b) See AFPI Section III, Part 20 for planning and coordination procedures in the administration of contracts containing price revision clauses.

§ 1003.850-4 Packaging costs.

USAF Packaging Cost Standards, covering direct material costs and direct labor for all of the packaging and preservation methods in Specification MIL-P-116 "Preservation, Methods of," are available to packaging specialists located in contract management activities (APDs/AFPROs) within the continental United States. By referring to the Cost Standard, packaging specialists can develop independent estimates in these direct cost areas. These estimates can be a useful tool in the overall evaluation and analysis of contractor posed direct packaging costs, and will be requested whenever appropriate. Requests will include sufficient information to permit the packaging specialist to make a proper

appraisal of packaging effort required. As a minimum, information about the size and quantity of items being procured, and the methods of packaging and preservation required, will be included. Where the number of different items being procured is so large as to preclude development of individual estimates by the packaging specialist, a sampling of items should be considered. Following development of his estimate, the packaging specialist is available for additional study or assistance as indicated.

§ 1003.850-5 Prenegotiation conferences and briefings.

(a) When, in any procurement cycle, a meeting is held with the contractor to reach agreement upon terms and conditions of a proposed contract or upon adjusted price on an existing contract, meeting will be preceded by a prenegotiation conference of Government's pricing team. Purpose of this meeting will be to: (1) Discuss proposal in detail to achieve full understanding, (2) to express opinions and air problems that have developed during review and analysis of proposal, and (3) to determine unified negotiation objectives and a course of action to be followed during conference with contractor.

(b) Those to whom the authority to manually approve contracts has been delegated (§ 1001.457(a) of this chapter) by the Director of Procurement and Production, Hq AMC, will establish a system for briefings by AF negotiating team after negotiation objectives have been firmed but before conclusion of negotiation conference. Procedures and requirements for prenegotiation reviews will be determined locally. However, briefings will be appropriate in following situations:

(1) A new contract follows contract(s) where contractor's performance has been unsatisfactory.

(2) A new procurement substantially increases a contractor's annual sales and production volume.

(3) Costs have increased substantially beyond those originally estimated.

(4) Items procured have performed poorly and required modification and retrofit.

(5) Performance indicates justification for additional or reduced profit.

(6) The procurement obligates a significant portion of the AF budget.

§ 1003.850-6 Pricing of fixed-price type maintenance, overhaul, and modification contracts.

(a) In those maintenance, overhaul, and modification contracts where services and indirect materials are procured on a fixed-price basis and it is agreed that contractor will furnish, as needed, certain direct materials and parts on a cost-reimbursement basis, profit consideration on the fixed price negotiated will represent reasonable reward for total contract effort. Subsequent reimbursement for contractor-furnished direct materials or parts will be limited to direct material costs only (see § 1007.4503-4(b)(1) of this chapter for contract clause and § 15.205-22(e) of this title for discussion on pricing intercompany sales or transfers of materials).

(b) In sole source procurements and procurements where manufacturer of item being repaired is quoting in competition with contractor(s) who must procure parts from such manufacturer to perform, exception to procedure outlined in paragraph (a) of this section is appropriate if review and negotiation reveals that compliance would prohibit an award at lowest overall price to Government, all factors considered. Under these conditions only, it may be agreed in advance to reimburse contractor at a later date for profit considerations applicable to furnishing direct materials and parts, as well as costs. However, in multiple source situation described, all sources must first be given an opportunity to requote on revised basis. Whenever such prospective agreement is reached, care must be exercised to insure that contract clearly reflects intent of both parties.

(c) Paragraph (a) of this section does not apply to contract changes authorizing the contractor to procure or fabricate direct materials or parts that were previously designated as Government-furnished. Such a change increases contract scope originally contemplated and payment of additional profit is appropriate.

§ 1003.850-7 Savings clauses.

Contractual savings clauses identify specific cost elements not considered in negotiating price or estimated cost, but which may be recognized at some future date. It is AF policy to limit subsequent recoupment to costs only and all savings clauses will include a statement to this effect. Exception to this policy is appropriate only as follows:

(a) Where a savings clause was in existence before the effective date of this section and it can be firmly established that the original intent of both parties was to recognize profit consideration applicable to the excluded element, as well as the cost, at some later date.

(b) Where deviation approval has been received according to the procedures in § 1001.109-50 of this chapter.

§ 1003.850-8 Preproduction or startup costs.

(a) Preproduction costs are usually substantial in the initial procurement of complex items. These costs can be attributed to a particular production item, but they are not affected by any particular unit. The treatment afforded these costs in pricing is significant in price redeterminations and subsequent production runs and will be set forth in price negotiation memorandum. Unless these costs are segregated and allocated carefully as nonrecurring costs in the initial pricing negotiation, it will be difficult to price subsequently on a sound basis. Examples of startup costs are: (1) Design or product engineering, or both, (2) plant rearrangement and installation of equipment, (3) training of labor force, and (4) tools, dies, jigs, and fixtures.

(b) Preproduction costs may be treated as direct or indirect costs. They may be prorated to the units produced over one or more contracts, or to a portion of the units produced on one contract. These costs generally will be pro-

rated to the units only and will not be an element of cost for spare parts or other support item procurement. If pre-production costs are prorated over an initial production quantity, care must be exercised in subsequent pricing to determine that no such costs are included in overhead. Care also must be exercised in determining reasonable overhead rates for the future, for the inclusion of such costs in overhead tends to increase such accounts temporarily. In the case of contracts calling for price redetermination prior to completion, extreme care must be exercised in identifying and segregating these costs if the balance of the work is to be properly priced. The assistance of a price analyst or auditor should be beneficial in this area.

§ 1003.850-9 Contractors' estimating systems.

Contractor's estimators perform a major role in developing projections and estimates of all elements of cost. To evaluate these elements, it is necessary to understand contractor's estimating system, including sources from which information is obtained by estimators, manner in which this information is used in developing estimates, extent of management review and revision, and controls exercised to insure realism of estimates. Where a continuing relationship exists with an AF supplier, estimating system surveys will be conducted by AF contract management activity. Because an understanding of a contractor's accounting system is necessary to determine its tie-in to cost estimating system, assistance of audit agency representatives usually will be obtained. Final reports of completed surveys will be sent to all interested AF procurement activities. Two copies of each report will be sent to AMC (MCPFF). It is important to remember, however, that estimating is largely a judgment process and that it is the judgments, as much as the system, that must be evaluated to determine the realism of a contractor's proposed price.

Subpart I—Subcontracting Policies and Procedures

1. In § 1003.903-3 paragraphs (a) (1) and (d) (1) (iv) are revised, and a new paragraph (e) is added, as follows:

§ 1003.903-3 Approval of purchasing system.

(a) * * *

(1) See Subparts G and H, Part I of this title and Subparts G and H, Part 1001 of this chapter regarding DOD and AF policy with respect to subcontracting with small business and labor surplus area concerns. The ACO in his continuous surveillance of the contractor's purchasing system will secure technical guidance and information from the cognizant AF small business specialist when making appraisal as to the effectiveness of the contractor's practices as required by AFPI Form 88, "Summary of Subcontracting Followup," check point 47, "consideration given to small business" (see paragraph (d) (2) of this section). The purchase methods analyst will advise the cognizant AF small business specialist when a survey is to be made and request the AF small business

specialist, during the time of the survey to review in the contractor's plant the practices of the contractor in the Small Business Program (see paragraph (d) of this section). The findings and conclusions of the AF small business specialist will be incorporated in the survey report. A contractor's purchasing system will not be approved that does not meet objectives of the Small Business Program. The Contract Management Region Evaluation Panel during their re-evaluation of purchasing systems according to paragraph (d) of this section will determine whether small business concerns have been afforded an equitable opportunity to compete for subcontracts within their capabilities (see § 1.707 of this title and § 1001.707 of this chapter).

* * *

(d) * * *

(1) * * *

(iv) See § 3.903-3(e) of this title and paragraph (e) of this section.

* * *

(e) Where other Government personnel have performed checks, maximum use will be made of such reports thus avoiding duplication of effort. Also where the contractor's internal administrative controls assure reasonable system compliance, such controls will be used.

2. In § 1003.903-4, revise paragraph (a) to read as follows:

§ 1003.903-4 Review of individual subcontracts.

(a) (1) See § 3.903-4(a) (1) of this title.

(2) Whenever any subcontract which would require the acquisition of facilities at additional cost to the Government is submitted for approval, the ACO will follow the procedure in § 1013.2402(j) of this chapter.

(3) See § 3.903-4(a) (3) of this title.

(4) A proven procedure for contractor selection of CPFF subcontracts is the utilization of a formal Subcontract Selection Board in procurements of major assemblies, subassemblies, systems, sub-systems, or for work of comparable complexity. The primary advantage of using a selection board is to insure that all pertinent factors pertaining to the procurement are considered by a qualified group of individuals. The board's decision, adequately documented, will have greater status than an individual's decision. When a contractor selection board is utilized, it is important that:

(i) The specific data to be analyzed in the proposal be established prior to issuing the Request for Proposal (RFP).

(ii) RFPs must ask for the specific data to be evaluated.

(iii) The completed RFPs be submitted to the board.

(iv) The selection criteria be established before the board reviews any proposals.

(v) An evaluation be made of the respective subcontractor's performance by also considering the effectiveness of the purchasing system, and the accounting system. The cognizant ACO, upon request by the prime contractor, will advise whether the subcontractor's systems have been approved by the AF Force.

(vi) The selection board be composed of individuals who have prestige and respect.

(vii) The minutes of the selection board be complete and document the decision of the board.

(5) through (8) See § 3.903-4(a) (5) through (8) of this title.

PART 1004—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart F—Procurement of Livestock Products

A new Subpart F is added as follows:

§ 1004.607 Reporting violations.

Reports of possible violation of a Statement of Eligibility given according to § 4.604 of this title will be forwarded through channels, including AMC (MCPFF), to the Director of Procurement and Production, DCS/Materiel, Hq USAF, for submission to the Secretary.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1005—INTERDEPARTMENTAL PROCUREMENT

Subpart B—Procurement From General Services Administration Stores Depots

Revise § 1005.201 to read as follows:

§ 1005.201 General.

* * *

(a) *Items stocked at base activities.*

(1) At regular intervals not to exceed once a quarter, but at least semi-annually, GSA and commercial prices will be informally reviewed and compared taking into consideration the overall delivered cost, including price of the item, transportation cost, and administrative cost in effecting payment. Records will be retained as necessary by procurement and supply activities to evidence that reviews were made. Formal solicitation of bids or requests for quotations from GSA stores depots in competition with commercial sources will not be employed to accomplish this review.

(2) The requirements of subparagraph (1) of this paragraph may by administrative determination be waived or modified if experience has clearly shown that the administrative cost of the periodic price comparison or other factors negate any savings which may be realized by commercial procurement. Such a determination will be made a matter of record in the files of the base procurement activity with reasons and justification to support the determination.

(3) The supply activity will appropriately code stock record cards, traveling purchase request cards, or other documents as appropriate to reflect the determinations made under subparagraphs (1) and (2) of this paragraph, and will satisfy requirements for these items by issuing purchase requests to base procurement or requisitions to GSA stores depots, as indicated by the records.

(b) *Non-stock items.* Prior to initiating a requisition to GSA or a purchase request for the items to base procurement, a special determination on the specific items will be made according to paragraph (a) (1) of this section, if the item has not been previously reviewed or coded. After this determination, a purchase request or requisition as appropriate will be issued. If this item is to fill "one-time" requirements, this determination is applicable only to the purchase of that requirement. However, if the item is to be added to base stocks, the determination will be effective until a determination is made according to paragraph (a) (1) and (2) of this section.

(c) *Quality of services.* Determination with respect to the quality of service rendered by GSA stores depots in comparison with the services obtainable from commercial sources will normally be based on past experience and should be a matter of continuing review to insure: (1) Timely delivery of required items and (2) elimination of the need for repeated back ordering which tends to increase the administrative costs in the acquisition of required supplies.

(d) Items and classes of material stocked by GSA stores depots which are under DOD-GSA interagency purchase assignment will be procured according to the implementing procedures relating to such assignments.

PART 1006—FOREIGN PURCHASES

Subpart A—Buy American Act; Supply and Service Contracts

§§ 1006.103-50(b); 1006.103-51 [Deletion]

Delete paragraph (b) of § 1006.103-50 and § 1006.103-51.

Subpart C—Appropriation Act Restrictions on Procurement of Foreign Supplies

Delete present Subpart C (25 F.R. 4388, May 18, 1960) and insert:

CROSS REFERENCE: See Subpart C, Part 6 of this title.

Subpart F—Duty and Customs

Revise paragraph (a) of § 1006.602-1 to read as follows:

§ 1006.602-1 General.

(a) For exemptions from customs duties in foreign countries where agreements have been signed, see Subpart D, Part 11 of this title and Subpart D, Part 1011 of this chapter.

Subpart T—Offshore Procurement

Add §§ 1006.2007 and 1006.2008, as follows:

§ 1006.2007 Payments for military assistance program, offshore procurement contracts.

Section 550 of the Mutual Security Act of 1953 and Section 402 of the Mutual Security Act of 1954 provide for the use of local currency proceeds resulting from the sales of surplus agricultural products

to further the objectives of the Military Assistance Program. Funds made available to the Department of Defense by the Foreign Operations Administration (FOA) under authority of referenced acts will be used in payment of MAP/OSP contracts. The procedures listed in paragraphs (a) to (g) of this section are applicable to all AF activities negotiating or administering MAP/OSP contracts and are designed to effect maximum utilization of local currency proceeds as quickly as possible.

(a) Prior to the negotiation of MAP/OSP contracts wherein use of local currency could be substituted for dollars, MAP/OSP bilateral agreements covering the sales of surplus agricultural products will be reviewed, and the Country Team should be consulted to insure that substitution of local currency for dollars is permitted by the agreement.

(b) To the limit of availability and to the extent permissible under MAP/OSP agreements, local currencies will be cited in whole or in part in MAP/OSP contracts executed in the future. Accordingly, in countries where such local currencies are available, payment under the contracts may be made in local currency, dollars, or a combination of both, at the option of the United States.

(c) Subject to paragraph (a) of this section, invitations for bids or requests for proposals will include a statement that payment may be made in local currency, dollars, or a combination of both, at the option of the United States.

(d) Except as herein provided, local currency will be obligated as a substitute for dollars by amendment to existing contracts, particularly in Government-to-government contracts. If the foreign government or the private contractor does not agree to the substitution of local currency for dollars, then local currency will be obligated in lieu of dollars in future contracts executed in the countries where subject currencies are available.

(e) The clause set forth in § 1007.4205-26 of this chapter will be used in contracts under the conditions described in paragraphs (b) and (d) of this section. If no agreement can be reached with the foreign government which would allow use of the payments clause set forth in § 1007.4205-26 of this chapter, deletion of the clause may be authorized by:

(1) Commanders of overseas commands, with power of redelegation to, but no lower than, the staff officers responsible for procurement in such commands.

(2) Commander and Deputy Commander, air materiel forces, with power of redelegation to not lower than a staff officer responsible for procurement within the AMF.

(f) In Japan it will not be necessary to amend existing MAP/OSP contracts to cite yen funds because Japan, under the terms of the MAP/OSP bilateral agreement covering the sale of surplus agricultural products, has agreed that yen proceeds generated by the agreement may be used for making contract payments. Accordingly, payments will be made on existing contracts in both dollar and yen on a 50-50 basis.

(g) Rates of exchange used to calculate contract prices in local currencies will be the exchange rates set forth in the exchange agreement between the Government of the United States and the foreign government.

§ 1006.2008 Use of foreign currencies for military construction in foreign countries.

Contracting officers involved in contracting for military construction in foreign countries will effect certifications for nonuse of foreign currency. (See § 1007.4207(e) of this chapter.)

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1007—CONTRACT CLAUSES

Subpart A—Clauses for Fixed-Price Supply Contracts

In § 1007.104-12, add the following Note after the clause: "Note: Existing contracts which do not contain security requirements, substantially according to the foregoing clause, will be amended to include the clause."

Subpart JJ—Contracts for Care of Remains

1. In § 1007.3603, paragraph (f) is revised to read as follows:

§ 1007.3603 Schedule.

f. Supplies, services, and transportation.

Item No.	Supplies, services, and transportation	Quantity estimated	Unit	Price Unit	Amount
1	For a Type I Casket, supplies, services and all transportation within a 30 mile radius of the contractor's establishment, in accordance with Specification MIL-C-9876 (USAF), Paragraph 3 (subparagraphs 3.1, 3.2 and 3.3), 4 and 5.		EA		
2	For a Type II Casket, supplies, services and all transportation within a 30 mile radius of the contractor's establishment, in accordance with Specification MIL-C-9876 (USAF), Paragraphs 3 (subparagraphs 3.1, 3.2 and 3.3), 4 and 5.		EA		
3	For transportation in a suitable funeral coach, ambulance, and/or service car when required to go beyond the 30 mile radius of the contractor's establishment, in accordance with Specification MIL-C-9876 (USAF), Paragraph 3 (subparagraph 3.4). If an AF Aerial Port of Entry is to be a using activity, the following will be added as an addendum to the Schedule:		EA (loaded mile)		

Item	Supplies, services, and transportation	Quantity estimated	Unit	Price Unit	Amount
4a	For a Type I Casket, Shipping Case, touch-up services and all transportation within a 30 mile radius of the contractor's establishment in accordance with Specification 3 (subparagraphs 3.2 and 3.5), 4 and 5.		EA		
b	Same requirement as a., except Type I Casket and shipping case oversize. (Indicate additional cost of casket and case only.)		EA		
5a	For a Type II Casket, Shipping Case, touch-up service and all transportation within a 30 mile radius of the contractor's establishment, in accordance with Specification MIL-C-9876 (USAF), Paragraphs 3, (subparagraphs 3.2 and 3.5), 4 and 5.		EA		
b	Same requirement as a., except Type II Casket and Shipping Case oversize. (Indicate additional cost of casket and case only.)		EA		
6	For transportation (except 30 mile radius condition) of remains in a suitable funeral coach or service car from AF Port of Entry (flight line or base) to contractor's establishment to selected carrier terminal in accordance with Specification MIL-C-9876 (USAF), Paragraph 3 (subparagraph 3.6).		EA		
a	For transportation from AF Port of Entry to funeral home to selected rail terminal.		EA (per loaded trip).		
b	For transportation from AF Port of Entry to funeral home to selected air terminal.		EA (per loaded trip).		
c	For examining casketed adult remains prior to delivery to selected carrier terminal.		EA		
d	For any touch-up services required on casketed adult remains.		EA		

NOTE: (1) Calls for items 3, 4, 5, or 6 of Schedule and Addendum thereto will be as directed by the contracting officer; (2) Items 6c and 6d are for use of Charleston Air Force Base when casketed remains are received from Puerto Rico and the Panama Canal Zone.

2. Revise § 1007.3604-29 to read as follows:

§ 1007.3604-29 Oversized casket.

When an oversized casket is required for any remains prepared under this contract, and no price therefor has been established in the schedule, the additional cost shall be allowed as approved by the Contracting Officer. Caskets exceeding either an inside length of 78 inches or an inside width of 23 inches shall be considered oversized. (Mar. 1961)

3. Add § 1007.3604-33 as follows:

§ 1007.3604-33 Passenger car.

When a passenger car is required to transport members of the immediate family to the funeral service and, if necessary, to the selected carrier terminal and return, the cost shall be allowed as approved by the Contracting Officer. (Mar. 1961)

Subpart NN—Special Clauses

Add § 1007.4065 as follows:

§ 1007.4065 Work requests.

The following clause will be used in maintenance, overhaul, and modification contracts whenever desired to cover the subject matter therein. (See Subpart U, Part 1054 of this chapter.)

Work Requests (Feb. 1961)

(a) Pricing Procedures for Inseparable Type Work. The Contractor shall notify the Contracting Officer, in writing, of work that is required to be performed under items ----- hereof promptly after such work is encountered. The Contracting Officer will indicate his concurrence as to the extent of the work to be performed by issuing a work request. The Contractor should furnish a quotation for the work to be performed within 30 days after receipt of the work request, and the parties shall forthwith commence negotiations to arrive at a reasonable price and delivery schedule therefor. Upon agreement an amendment to the work request shall be issued setting forth the agreed prices and delivery schedules.

(b) Ordering of Additional Work—Severable. The following procedure will be used to order additional work of the type covered by Items . . . of the contract. Such work will be called for by the issuance of work requests. It is agreed that work requests may be issued at the sole option of the Contracting Officer during the term of the contract, and that the Government has no obligation under this paragraph b to issue any such work request. Upon receipt of a work request, the Contractor shall quote a price and delivery schedule for the work called for but shall not proceed with the work until such price is approved by the Contracting Officer, provided, however, whenever the Contracting Officer determines that it is in the interest of the Government to not delay performance of the work until a price is negotiated, he may specify in the work request that the Contractor is authorized to proceed forthwith. Within ---- days after receipt of such order, and in every case prior to completion of the work called for therein, the parties shall negotiate a price and delivery schedule for the work order, and the work request shall be amended accordingly.

(c) Work requests issued under paragraphs a or b above shall bear the number of this contract, be serially numbered, dated, and signed by the Contracting Officer. They shall set forth the work to be performed and shall refer to the contract item pursuant to which the request was issued. They shall include, or be amended to include the price of the work and the delivery schedule therefor. In addition, work requests issued under paragraph b above shall cite the funds allotted for payment of the work ordered thereby. The provisions of the contract shall be applicable to all work requests issued under this clause. Failure to agree upon a reasonable price shall be considered a "dispute concerning a question of fact" within the meaning of the clause of this contract entitled "Disputes." Amendments to work requests may be issued subject to the same conditions as the original work request. The Contractor's concurrence as to the terms of the work request or amendment will be evidenced by signing the respective document. The term "work" as used herein includes both supplies and services to the extent covered by the referenced contract item. When the clauses are used in CPFF contracts, the references as to price will be changed to estimated cost and fee.

Subpart PP—Clauses for Contracts Issued by Foreign Procurement Activities

1. In § 1007.4207-6, add a new paragraph (e) to the clause, as follows:

§ 1007.4207-6 Payments to contractors.

* * * * *

(e) If tender of payment, in the currency of the country where the work is to be performed and/or of another foreign country where materials are purchased, is made by the U.S. Government, the Contractor agrees that he will accept such currency at the official rate of exchange at which currency is disbursed by U.S. accounting and finance officers in payment for work and services rendered or materials purchased in accordance with established rules and procedures of the U.S. Government governing payments in such foreign currency; provided that the amount of such foreign currency shall not exceed that portion of the total amount of each payment to the Contractor that is represented by work performed, or materials purchased in such foreign country.

2. Section 1007.4207-7 is revised to read as follows:

§ 1007.4207-7 Taxes.

See §§ 11.403 and 11.404 of this title and § 1011.403 of this chapter.

3. In §§ 1007.4207-15 through 1007.4207-19, add "(Oct. 1957)" after the subject of each clause.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1008—TERMINATION OF CONTRACTS

Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

§ 1008.209-7 [Amendment]

In § 1008.209-7:

a. The reference "§ 1054.503-2" is amended to read: "§ 1001.314-52."

b. The material following paragraph (f) (2) is revised to read as follows: "For appeal of Determination and Findings see § 1001.314 of this chapter and ensuing sections thereunder for preparation and procedure."

Subpart E—Disposition of Termination Inventory

In § 1008.513-50, revise paragraph (c) to read as follows:

§ 1008.513-50 Referrals.

* * * * *

(c) The receiving plant clearance officer will promptly acknowledge and "open" all referred cases unless substantive inadequate information is presented. The initiating office will immediately be notified of any inadequacy which prohibits opening the case. If the inadequacy is due to unacceptable inventory schedules, the case will be retained and receipt acknowledged. The case will be opened upon receipt of adequate inventory schedules. The date the case is opened (as appearing in AFPI

Form 56) will be recorded as part of the official case record. Acceptance of referral responsibility will be evidenced by the transmission of the assigned plant clearance case number to the initiating office.

Subpart H—Forms

In § 1008.864-2(c), revise subparagraph (2) to read as follows:

§ 1008.864-2 Explanation of items on cover sheet for final cost settlement of complete or partial termination of fixed-price contracts.

* * *

(c) * * *

(2) *Reservations from settlement.* If the termination settlement excludes any unsettled claims of subcontractors assumed by the Government or reserved for later settlement or any other minor element of the claim, the amounts to be reserved will be shown as additional deductions under "Cost Price of Items/Units Terminated" and thereby will be reflected in the "Reduction of Contract Price (Credit)."

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1009—PATENTS, DATA AND COPYRIGHTS

Subpart B—Data and Copyrights

In § 1009.202-1(a), subparagraphs (2) and (4) are completely revised, as follows:

§ 1009.202-1 Acquisition of data.

(a) *General.* * * *

(2) *Processing data requirements.* The AF activity responsible for initiating AMC Form 379A, "Purchase Request" (PR), or DD Form 448, "Military Interdepartmental Purchase Request" (MIPR), or the appropriate data requiring agency, as outlined in subparagraph (1) of this paragraph, will indicate the data required on or by attachment to the PR or MIPR. When different types of data, e.g., handbooks, manuals, or drawings are required for different items of equipment, the type(s) required for each item will be shown on the PR or MIPR as separate line items. Buyers, contracting officers, and contract review committees are charged with the responsibility of being certain that data is procured on a line item basis in all applicable contracts, either individually priced or estimated as separate line items.

* * *

(4) *Data pricing, delivery and payment requirements.* (i) Whenever there is a requirement by the requiring activity for data, as determined in subparagraph (2) of this paragraph, the IFB or RFP will require that specific prices shall be furnished for each item of such data.

(ii) IFBs and RFPs should contain a provision as follows:

Data Pricing (Mar. 1961)

Bidders or offerors are required to insert opposite the data items the price of such data.

(i) Bidders shall not submit bids on data items with the words "No Charge for Data" or "Data Price Included in Costs of End Items."

(ii) Under any contract which requires the delivery of data, the accounting and finance office will be advised by the contracting officer to withhold final payment until DD Form 250, "Material Inspection and Receiving Report," is obtained through regular channels indicating that data has been delivered and accepted.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1013—GOVERNMENT PROPERTY

Subpart A—General

Revise § 1013.103 to read as follows:

§ 1013.103 Control of Government property.

It is provided in § 30.2 (Appendix B, 205-5) and § 30.3 (Appendix C, 103-3) of this title, that property to which the Government has acquired a lien or title solely as result of partial, advance, or progress payments will not be controlled under the procedures of either Manual. The foregoing means that for the purposes of accounting, control, identification, etc., that such property will not be subject to the procedures established for Government property defined as Government-furnished or contractor-acquired. Nothing in the foregoing intends that the Government's title or right of title to such property is in any way lessened. Accordingly, when a development under the contract requires that action be taken to protect the Government's interests, the handling, disposition, etc., of such property will be subject to the provisions of the Default clause, Termination clause, or Special Tooling clause, as applicable.

(a) The Commander, AMC, has been delegated the authority to: (1) Control Government-owned industrial property, including the correction and adjustment of deficiencies and irregularities regarding the administration of such property, (2) grant deviations, in individual cases, from established policy with respect to record requirements on such property, and (3) appoint property administrators. This delegation does not include authority to act on policy matters relating to furnishing Government-owned industrial property and the control thereof, except as specifically stated.

(b) The authority described in paragraph (a) of this section has been delegated by the Commander, AMC, to the Director of Procurement and Production, Hq AMC, who has further delegated the authority to the Deputy for Procurement, Directorate of Procurement and Production, Hq AMC.

(c) The Director of Procurement and Production, Hq AMC, has delegated authority to: (1) Control Government-owned industrial property, including the correction and adjustment of deficiencies and irregularities regarding the administration of such property, (2) grant exceptions, in individual instances, with respect to the policy that contractor's

records be designated and used as official contract records, and (3) appoint property administrators, to the following:

(i) Commanders and vice commanders of major air commands within the continental United States, with power of redelegation limited to staff officers responsible for procurement within their headquarters and within the headquarters of the first echelon of command immediately subordinate to a major air command.

(ii) Commanders and vice commanders of oversea commands with power of redelegation limited to staff officers responsible for procurement within command headquarters and within the headquarters of the first echelon of command immediately subordinate to a major command; air attaches on duty in foreign countries; and chiefs of AF foreign missions.

(iii) Director of the Air Force Academy Construction Agency.

(iv) Commanders and deputy commanders of contract management regions, AMC field procurement activities, and separate base procurement activities with power of redelegation of only that authority cited in paragraph (a) (2) of this section, to the director of contract administration for the CMRs or to the staff officer responsible for procurement matters at the other activities, provided such officer is not below the level of the director of procurement and production at the air materiel area, or equivalent organization. Authority contained in paragraph (a) (1) and (3) is not subject to further redelegation.

(v) Commanders and deputy commanders of Air Materiel Forces (AMFEA and AMFPA), with power of redelegation not to extend below a staff officer responsible for procurement of the first echelon of command immediately subordinate thereto.

(d) The Industrial Property Branch (MCPKI), Hq AMC, will exercise staff supervision and technical direction over the control of Government-owned industrial property within the Air Force (both continental United States and overseas).

Subpart Y—Industrial Real Property—Construction, Modification, Alteration, Addition and Rehabilitation

Former Subpart Y is deleted and a new Subpart Y is inserted therefor:

Sec.	Scope of subpart.
1013.2500	Applicability of subpart.
1013.2501	Responsibilities.
1013.2502	Air procurement district/Air Force plant representative.
1013.2502-1	Contract management region.
1013.2502-2	Civil engineering components of the Air Materiel Area, depot and/or base.
1013.2502-3	AMC centers.
1013.2502-4	Directorate of Procurement and Production (MCP), Hq AMC.
1013.2502-5	Office of Civil Engineering (MCE).
1013.2503	Definitions.
1013.2504	Approvals.
1013.2504-1	Approval of facilities projects, funding and contracting.
1013.2504-2	Approval of construction.
1013.2505	Procedures.
1013.2505-1	Minor construction.

Sec.
1013.2505-2 Major construction.
1013.2506 Reports.

AUTHORITY: §§ 1013.2500 to 1013.2506 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 1013.2500 Scope of subpart.

This subpart establishes a standard procedure for obtaining approvals of construction, modification, alteration, addition, and rehabilitation to Air Force owned-contractor operated industrial real property.

§ 1013.2501 Applicability of subpart.

This subpart applies to Directorate of Procurement and Production (MCP) and Office of Civil Engineering (MCE), Hq AMC, AMC centers, civil engineering offices of the AMC (CONUS), contract management regions, air procurement districts and Air Force plant representatives offices. This subpart does not cover all contract requirements for construction, modification, alteration, addition, or rehabilitation projects. Thus, the contracting officer will be governed also by all applicable terms of the governing contracts. The labor provisions in the governing contracts applicable to construction work will be particularly noted and enforced.

§ 1013.2502 Responsibilities.

§ 1013.2502-1 Air procurement district/Air Force plant representative.

Initiate AF evaluation, processing, and control of contractor application and Appendix A schedule of industrial facilities, see Subpart X of this part. Obtain AF civil engineering review, recommendation, and technical inspection for acceptance of construction projects involving Schedule I (land, etc.) and Schedule II (buildings, etc.) items. Determine scope of project, whether major or minor construction, and method of funding. Forward application with recommendations to the AMC center involved for review and approval. Upon notification, proceed in administration of contract actions and assist contractor in project accomplishment.

§ 1013.2502-2 Contract management region.

Maintain surveillance over the initiation, processing, and contract accomplishment of construction projects.

§ 1013.2502-3 Civil engineering components of the Air Materiel Area, depot and/or base.

These components will, under arrangements made with the AMC centers and field administration offices for the individual projects involved, review and make recommendations on technical sufficiency of Appendix A (Schedule I and II), make technical recommendation as to whether a project is to be considered "major" or "minor"; review and, according to §§ 1013.2502-6 and 1013.2504-2, approve design analysis, cost estimates, preliminary and final drawings, specifications; conduct inspections for progress of construction and for ac-

ceptance by the Air Force. This civil engineering responsibility will normally extend to industrial facilities located in the following areas:

(a) MAAMA, Civil Engineer (MABA), Olmsted AFB, Pennsylvania: Pennsylvania, New Jersey, Delaware, Maryland, Virginia, and West Virginia.

(b) MOAMA, Civil Engineer (MOBA), Brookley AFB, Alabama: Alabama, Mississippi, Louisiana, Tennessee, and the portion of Florida west of the Apalachicola River.

(c) OCAMA, Civil Engineer (OCBA), Tinker AFB, Oklahoma: Minnesota, Iowa, Missouri, Arkansas, Oklahoma, Kansas, Nebraska, South Dakota, and North Dakota.

(d) OOAMA, Civil Engineer (OOBA), Hill AFB, Utah: Idaho, Montana, Wyoming, Colorado, Utah, and Nevada.

(e) ROAMA, Civil Engineer (ROBA), Griffiss AFB, New York: Maine, New Hampshire, Vermont, New York, Massachusetts, Connecticut, and Rhode Island.

(f) SAAMA, Civil Engineer (SABA), Kelly AFB, Texas: Texas and New Mexico.

(g) SBAMA, Civil Engineer (SBBA), Norton AFB, California: Arizona and the portion of California south of a line from the intersection of the eastern border of California with the 117th meridian of longitude, to the intersection of the 119th meridian of longitude with the 35th parallel of latitude, thence west to the Pacific Ocean (i.e., part of the SBAMA-SMAMA boundary as described in General Orders No. 106, November 30, 1949).

(h) SMAMA, Civil Engineer (SMBA), McClellan AFB, California: Washington, Oregon, and the portion of California north of the line described under SBAMA.

(i) WRAMA, Civil Engineer (WRBA), Robins AFB, Georgia: North Carolina, South Carolina, Georgia, and the portion of Florida east of the Apalachicola River.

(j) Wright-Patterson AFB, Directorate of Civil Engineering (EWF), Ohio: Michigan, Wisconsin, Illinois, Indiana, Ohio, and Kentucky.

§ 1013.2502-4 AMC centers.

The industrial facilities project and facilities contracting offices of AMC centers will be the focal points in operational matters for their respective programs. The AMC centers in conjunction with the APDs, AFPRs, and civil engineering components will plan, budget, and submit program fund requests covering their respective industrial facilities projects. The AMC centers will determine their necessity for industrial facilities and requirements for construction (land, buildings, installations) in support of contractor performance. For such construction, the AMC centers will obtain from the civil engineering field components and/or office of Civil Engineering (MCE), Hq AMC, AF civil engineering reviews of: Construction proposals, designs, and inspections for Government acceptance of construction work.

§ 1013.2502-5 Directorate of Procurement and Production (MCP), Hq AMC.

Has staff surveillance of industrial facilities program management which includes new expansions and the retention or disposal of existing facilities. MCP will provide staff assistance concerning the programming, funding, contracting, and resources management of industrial real property.

§ 1013.2502-6 Office of Civil Engineering (MCE).

Will exercise technical staff surveillance and will provide technical assistance to the AMC center commanders, contract management regions, APD, and AFPRs pertaining to industrial facilities real estate, engineering, design, construction, and maintenance when it has determined that such matters are beyond the scope or capability of the field civil engineering staffs.

§ 1013.2503 Definitions.

(a) Construction, as differentiated from rehabilitation, includes new construction, modification and alteration of, and additions to, facilities.

(b) New construction: Erection or assembly of a new facility separate and apart from an existing facility.

(c) Modification: Any work in a facility which does not change its size or dimensions and which does not change the function or use for which it was originally intended or is presently being used.

(d) Alteration: Any work to a facility which involves structural change and which changes the present function or usage.

(e) Addition: Any external extension of a facility which increases its geometrical dimensions.

(f) Rehabilitation (capital type, abnormal or nonrecurring maintenance): Covers those projects which require extensive repairs or replacement and the cost is normally capitalized in privately-owned industries. Painting of large plants is costly, however, it is not a capital expenditure. This work should be accomplished in such a manner that a portion of the plant is painted each year, thereby assuring the entire plant is painted as frequently as is required in a particular climatic condition. Also, other work performed on real property to maintain it in good physical condition will not be classified as rehabilitation, e.g., patching of plaster, walkways, pavements, or roofing; replacement of defective light bulbs, electrical switches; servicing of nonseverable mechanical and electrical equipment; and inspection and repair of utility systems as required to insure continued operation.

(g) Emergency repair: Urgent repair work on facilities damaged by an "accepted peril."

(h) Major construction: All work of a capital nature, such as: Additions, new construction, modification, alteration, rehabilitation, or abnormal maintenance projects, which materially affects the structure, capacity, or capability of the

real property whether the work is to be performed by Government or contractor funds.

(i) **Minor construction:** All work items in construction and maintenance which are expense type items that do not affect the structure, capacity, or capability of the facility.

§ 1013.2504 Approvals.

§ 1013.2504-1 Approval of facilities projects, funding and contracting.

See Subpart X of this part.

(a) *Major construction, new industrial facilities expansions and capital type rehabilitation (nonrecurring maintenance) projects.* These projects are subject to approval or authorization by the AMC center commander. Also minor construction projects for which funding authorizations are required, will be submitted by the APD/AFPR to the AMC center involved.

(b) *Capital type rehabilitation (nonrecurring maintenance).* The same general preparation and processing instructions of Subpart X of this part will apply to handling of contractor application for capital type rehabilitation of industrial facilities, except that the items will be submitted on fiscal year requirement basis.

(1) Expected future usage of the real property will be a major factor in development and approval of capital type rehabilitation (nonrecurring maintenance) projects.

(2) Budgetary estimates (two copies) will be submitted by the APD/AFPR to the appropriate AMC center on or before February 1st preceding the beginning of the fiscal year. Appendix "A" details of schedule requirements will be submitted at the earliest practicable date, but no later than June 15th.

(3) According to Hq AMC and AMC center approval authorities of facilities expansion projects whose cost will not exceed nor commit the Air Force to more than \$500,000 (see § 1013.2401-1), any item of capital type rehabilitation (nonrecurring maintenance) which is subject to individual consideration, approval, and accomplishment may be considered as a separate project or item of work for processing and funding purposes.

§ 1013.2504-2 Approval of construction.

The engineering reviews for approval of design, drawings, specifications, etc., and conduct of inspections will be effected under arrangements made for individual projects between the AMC center or APD/AFPR involved and AF civil engineering components. Normally the reviews for construction project design approval, depending upon cost and nature of project, will be as follows:

(a) *Construction not exceeding \$15,000.* Minor projects not over \$15,000 can be approved by the APD/AFPRO without referral to the AF civil engineering office if structural changes are not involved, see paragraph (b) of this section for offices which may provide civil engineering assistance, when needed.

(b) *Construction not exceeding \$250,000.* The AMA, depot, or base civil engineer (usually in proximity to con-

struction site) will be responsible for technical review and approval of plans and specifications for construction projects costing not more than \$250,000 (see § 1013.2502-6).

(c) *Construction exceeding \$250,000.* The AMA, depot or base civil engineer (usually in proximity to construction site) will technically review these plans and specifications and furnish pertinent comments and recommendations to AMC (MCE), which will be responsible for technical approval.

§ 1013.2505 Procedures.

Construction projects will require a determination of whether the work is "major" or "minor" as indicated in § 1013.2503.

§ 1013.2505-1 Minor construction.

The accomplishment of minor construction projects will be effected by the APD or AFPR in coordination with the appropriate AF civil engineering office when engineering assistance is required.

§ 1013.2505-2 Major construction.

(a) Major construction of projects and new industrial facilities expansions of Schedules I, II, etc. (land, buildings, installations) will be submitted to the AMC center according to the format of contractor application and Appendix "A" procedures of Subpart X of this part. Where an industrial facilities expansion involves the acquisition of real estate by purchase or lease, see also the additional data required by Subpart Z of this part.

(b) AMC center processing of construction projects: The AMC center will obtain coordination, concurrence, or authorization of Hq AMC, Hq USAF, Federal departments and agencies prior to approval and release of major construction and/or rehabilitation projects. If during the course of a project, concurrence, coordination, or approval is required by Hq AMC, Hq USAF, or any Federal department or agency, the request for such will be directed to the AMC center. Concurrence, coordination, or approval will be shown by the AMC center on approved plans whenever possible and when not feasible will be incorporated in documents accompanying the approved plans and specifications. For each project, the AMC center will inform the APD/AFPR of the authorization for construction and procedure for obtaining AF civil engineering review, reporting of progress, and acceptance of completed construction work.

(c) *Construction accomplishment:* As requested by the AMC center, the APD/AFPR will proceed to effect accomplishment of construction by AF contractors in four phases, as follows:

(1) First phase: Selection of architect-engineering firm to prepare drawings and specifications and to include supervision of construction. Use of an A-E firm rather than the contractor's engineering force is mandatory for design and supervision of projects costing over \$50,000 unless waived by the contracting officer after receipt of civil engineering recommendations. Where A-E firms are used, the appropriate civil engineer will furnish technical advice

for the technical portion of the statement of work and the firms considered. Civil engineering responsibilities hereunder will normally rest with the field civil engineering components for projects not exceeding \$250,000 and with the Office of Civil Engineering (MCE), Hq AMC, for projects exceeding \$250,000.

(2) Second phase: Preparation of preliminary drawings (prepared on 28 x 40 inch sheets), outline specifications, cost estimates, and design analysis of the work to be accomplished under each project. The drawings and specifications will be prepared so as to avoid to the maximum practicable extent the inclusion of restrictive features which would tend to require furnishing the products of specific manufacturers: see §§ 1.304 and 1.1201 of this title and § 1001.1201 of this chapter. These preliminary drawings and outline specifications will cover the following construction features:

(i) Plot plan of construction site and construction orientation.

(ii) General building configuration and dimensions (plans and elevations).

(iii) Soil conditions and bearing values.

(iv) Foundations (isolated, spread, combined, continuous, mat or raft, pile (type)).

(v) Type superstructure (wood, steel, prefab, and others).

(vi) Type roof and decking.

(vii) Type floor.

(viii) Type and extent of electrical installations (primary supply and secondary distribution).

(ix) Type and extent of other utilities and services.

(x) Construction or rehabilitation schedule.

(xi) Type and extent of mechanical and nonmechanical building installations required.

(xii) Type and extent of site preparation.

(xiii) Number of employees in each work area (manufacturing, assembly, office, etc.).

(xiv) Cost estimate of construction (line items breakdown as: land, property, improvements, structures, mechanical building installations, and others).

(xv) Design analysis providing a description of the facility, design assumptions, design factors used, type and character of materials, and contractor's options, if any, to be employed.

After AF administration office and civil engineering review, two bound ozalid copies will be forwarded to the AMC center. The project identification and number will be placed on the binding. The AMC center will obtain engineering and cost evaluations of the proposal. One marked copy will be returned through channels to the contractor with technical review comments which will be authorization to proceed with the third phase.

(3) Third phase: Upon approval of the preliminary drawings and outline specifications, the contractor will prepare the detailed construction plans and specifications. Two reproducible copies of the final detailed plans and specifications will be forwarded to the AMC

center for review and obtaining technical approval. Sufficient space will be allowed on each reproducible drawing of the final plans and reproducible cover sheet of specifications to provide for the following signature blocks:

Prepared by (Representative) ----- (for firm doing architect and engineering work).

Recommended for approval (Representative) ----- (for contractor operating Air Force plant).

Approved by ----- (for the Civil Engineer).

Approved by ----- (for AMC Center).

One reproducible copy will be retained in the AF civil engineering office (for the AMC center involved), the other reproducible copy with approvals indicated thereon will be returned to the contractor through the APD or AFPR. This constitutes authorization to advertise for bids and to initiate construction. A bid tabulation will accompany all initial construction progress reports. Bids will be opened and read publicly at the time and place indicated on the invitation for bid.

(4) Fourth phase; construction: Change orders as they occur will be reviewed by the appropriate civil engineer and approved by the AMC center. After initiation of construction, two copies of the monthly progress reports will be submitted by the 15th of each month to the AMC center involved (one copy of each report will be furnished to the civil engineer by the AMC center). Prior to acceptance of completed construction by the Air Force, a set of appropriate photographs (if applicable) showing functional characteristics of the completed installation, and one set of reproducible copies of the final "as-built" detailed plans and specifications, and the final progress report will be submitted to the AMC center for the appropriate AF civil engineering office of record.

(d) Inspection and acceptance: The APD/AFPR having administration of the contract will monitor the accomplishment of industrial construction and rehabilitation projects, the submittal of progress reports and acceptance of completed construction. AF civil engineering assistance, as required to insure compliance with approved plans and specifications and for inspection and acceptance of construction facilities will be provided by field civil engineering components or AMC (MCE). Any deficiencies in the construction work required by the contract or the lack of specified items of equipment need not necessarily delay the transfer of usable new construction. The completed work for all major construction projects will be documented by the prime contractor and the certification and acceptance will be evidenced by a receipt containing the following summary data:

- (1) Transfer of construction:
 - (i) Station, name and location of the industrial facility being expanded.
 - (ii) Serial number, Air Force contract number, supplement, etc.
 - (iii) Job number/project.
 - (iv) Date of transfer of construction.
 - (v) Description:
 - (a) Type of building or feature.
 - (b) Number of units.

(c) Drawing number reference.

(d) Base data (lin. ft.; sq. ft.; gals/day; etc.).

(e) Remarks pertaining to the building or feature.

(f) Deficiencies (list exceptions to plans and specifications). Include an agreement for correction of deficiencies, with a time limit in agreement with the contract terms; a certification that deficiencies will be corrected as an integral part of the contract; and date of final acceptance inspection.

(g) Final approved cost of the project.

(vi) Certification: It is certified that the construction listed hereon is in accordance with maps, drawings, specifications, and change orders approved by the authorized representative of the Air Force, except for the deficiencies listed. Certified by:

(a) (Architect-Engineer)

(b) (Air Force Contractor)

Accepted by:

(a) (Air Force Civil Engineer)

(b) (Air Force Contracting Officer)

(2) All necessary documents, including originals or copies of all records and maps, complete reproducible as-built drawings, and specifications corrected to show all changes from the originals, including supporting utilities, leases, contracts, guarantees given by the contractor, subcontractors, and material vendors, estimated costs and other pertinent data required for accountability records and for protection of Air Force interests and investments will accompany the receipt. In event any of these documents and data are not available, that fact will be noted together with statement as to date each item will be furnished. Nonavailability of documents and data does not constitute construction deficiencies.

(3) The AF price contractor will be provided with an executed copy of the receipt together with those items necessary for maintenance and operation of the facility, including door keys, manufacturer's catalogs, and maintenance and operating manuals. The APD/AFPR responsible for acceptance inspection and inventory of industrial property will submit two information copies of the completed receipt to the AMC center not later than 30 days after the date of acceptance. One copy will be furnished AMC (MCE) by the AMC center.

§ 1013.2506 Reports.

(a) APD/AFPR will be responsible for insuring the accomplishment and submission of industrial construction progress reports, by prime contractors to the AMC center for all "major" construction projects.

(b) Industrial construction progress reports will be submitted, beginning as soon after the opening and analysis of the construction bids as possible and before construction is begun, then monthly thereafter until the project is completed. Progress reports will be submitted within 15 calendar days after the close of monthly reporting period and will cover construction activity for the preceding month. Two copies of the reports will be submitted. The reports will be no smaller than 8 x 10½ inches and no

larger than 8½ x 15 inches, or folded to these sizes.

(c) The reports will be of two types:
(1) Initial report will contain but is not limited to the following information:

- (i) Project No. -----
- (ii) Facility Contract No. -----
- (iii) Project Title -----
- (iv) Name of the Facility (to include AF Plant No. if applicable) -----
- (v) Location of the Project -----
- (vi) Name and address of the architect-engineer -----
- (vii) Amount of the engineering fee, to include supervision and inspection of construction -----
- (viii) Designs and specifications:
 - (a) Completed by the Engineering firm on ----- (date).
 - (b) APD/AFPR recommended approval on ----- (date).
 - (c) AMC Center approved ----- (date).
 - (d) Submitted for bids ----- (date).
 - (ix) A bid tabulation and analysis sheet marked to indicate the selected contractor, and any other appropriate comments.
 - (x) Date construction contract is to be awarded.
 - (xi) Type of contract (SFP, CFFF, Other).
 - (xii) Explanation of why contract was not awarded to low bidder (if applicable).
 - (xiii) Signature of responsible official ----- (Contractor's).

(2) The monthly reports will contain but not be limited to the following information:

(i) A short narrative by the supervising engineer explaining the work progress or lack of progress. Problem areas where Air Force assistance might be beneficial should be included.

(ii) A short explanation of the funds which show the amount of the basic construction contract and change orders with appropriate increases and decreases. A short explanation of the changes.

(iii) When applicable, a statement showing construction time extensions, with a short explanation for each one.

(iv) Photographs of significant steps in the construction. (Not necessarily required with each report.)

(v) The final monthly report will be so identified.

NOTE: Forms are not specifically required in order that full use may be made of the reports submitted by the engineering firm supervising the construction. No locally designed forms will be established by AMC activities in connection with the reports prescribed herein. Each of the above types of reports should include items of special interest or importance to the specific construction job. Due to the variety of construction jobs in progress at any given time, it is considered appropriate to depend upon the supervising engineer to divide the individual projects into their important components. Industrial reporting requirements set forth in this circular are subject to review and approval by the Bureau of Budget under the Federal Reports Act. BOB approval 21-R-134.2 which expires March 31, 1963, is assigned to this report.

Subpart DD—Leasing of Machinery and Industrial Equipment

1. Revise § 1013.3002 to read as follows:

§ 1013.3002 Delegation of authority; leases of machine tools and other production equipment.

(a) Secretary of the Air Force Order No. 631.1, September 15, 1960, is quoted below:

L. Authority to enter into and execute leases, in the name of and by the authority of the Secretary of the Air Force, of machine tools and other items of production equipment under the control or custody of the Department of the Air Force, upon the terms and conditions stated below, and in accordance with the lease form specified in paragraph 4, is hereby granted, pursuant to Section 2667 of Title 10, United States Code, to the Deputy Chief of Staff, Materiel.

7. The authority conferred on the Deputy Chief of Staff, Materiel, in paragraphs 1 and 2 herein may be redelegated, in writing, with or without power of successive redelegation and under such terms, conditions and limitations as may be deemed appropriate within the following limitations:

a. At Headquarters, Air Materiel Command, redelegation will not be made below the level of the Chief or Deputy Chief of a Division, Directorate of Procurement and Production.

b. At Air Materiel Command Centers, redelegation will not be made below the Director of Resources, or comparable level.

c. Contract Management Regions, redelegation will not be made below the level of the Directors of Contract Administration.

(c) The authority has been further delegated by the Director of Procurement and Production, Hq AMC, to the following:

(1) Chief or Deputy Chief of the Industrial Resources Division.

(2) Commander and deputy commander of the AMC centers with power of redelegation to the director of resources or comparable level.

(3) Commander and deputy commander of the AMC contract management regions with power of redelegation not below the level of the director of contract administration.

2. Add §§ 1013.3003 to 1013.3003-3 as follows:

§ 1013.3003 Processing of requests for leases.

§ 1013.3003-1 Place and form of submission.

Requests for leases will be submitted to the responsible air procurement district (APD) office having administrative jurisdiction over the area in which the leased facilities are to be physically located. Requests for leases received by activities other than the APD will be forwarded to the appropriate APD for processing. All requests for leases, BOB Approval 21-R134, will contain or be supported by the following information:

(a) A list, including the standard commodity code numbers, of the items desired to be leased.

(b) A description of the purpose for which the lease is desired including:

(1) Identification of any prime Government contractor for whom a substantial quantity of work is to be done with the leased property.

(2) A list of subcontract or purchase orders to be performed showing identification of the components or end items to be produced.

(3) Estimated duration of the proposed requirement for the leased items.

(4) Percentage of capacity at which the leased items are expected to be used for defense production, i.e., the expected degree of utilization.

(c) Evidence of the lessee's financial stability. (See § 1013.3003-3.)

(d) The percentage of AF work to the total work to be performed with the items to be leased, including, if the majority of the work will be done for another service within the Defense Department, details of such work and identification of such other service.

(e) A statement whether or not the lessee has in existence or in negotiation a facilities contract or lease with another service and if so, the details relative thereto.

(f) The number of additional employees to be hired as a result of the use of the property to be leased.

(g) A certification that the proposed lessee has not employed or retained a company or person to solicit or secure the desired contract on a contingent fee basis, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

§ 1013.3003-2 Preliminary agreement by proposed lessees.

As soon as practicable after receipt of a lease request, the chief, APD, will present the requesting lessee with a copy of "Facilities Lease Agreement," prescribed by Subpart CC, Part 1007 of this chapter. If the terms of such agreement are acceptable to the lessee, an MCP 71-648AA, "Acceptance Agreement," will be appropriately signed and incorporated as part of the file in support of the proposed lease. Such Acceptance Agreement will be assigned a contract number and the same number will be used on the definitive lease when issued. If the terms of the standard form lease agreement are not acceptable of the proposed lessee, under normal circumstances, the lessee will be advised that the terms of the lease cannot be changed and that, therefore, the request for lease must be rejected. However, if a proposed lessee should have reasonable objection to the terms of the standard form lease and the lease is essential, the air procurement district may continue processing the lease until the availability of the items is established, at which time a request for authority to deviate from the standard form lease will be submitted. Such request, setting forth the facts in support of the deviation and the details of the proposed lease including information on the eligibility of the prospective lessee and the essentiality of the lease, will be sent through the CMR headquarters to AMC (MCPMS). MCPMS will review the request and forward it, through the Office of the Procurement Committee (MCPC), to Hq USAF (AFMPP), for approval by the Assistant Secretary of the Air Force (Materiel). Because all deviations require approval by the Secretary, they should be kept to a minimum and should not be recommended unless very well justified.

3. In § 1013.3003-3, the introductory portion is revised; the last sentence of paragraph (a) (1) (ii) is revised; and new paragraphs (c) and (d) are added, as follows:

§ 1013.3003-3 Determining proposed lessee's eligibility.

Upon receipt of a request for lease and after tentative agreement on the lease form, the chief, air procurement district will investigate the proposed lessee's eligibility for a lease. The financial section in the Contract Management Region or APD, as appropriate, will be requested, by means of an AFPI Form 63C, "Request for Facility Capability Report," to determine the company's financial qualification. Such determination will be recorded in writing. The following instructions provide policies and procedures to be followed in connection with this determination:

(a) * * *

(1) * * *

(ii) * * * The administrative contracting officer will forward the original fully executed bond, with a copy of the lease agreement, to AMC (MCJCR).

(b) Leases to companies in a Group A or Group B labor area requiring additional employees must be carefully justified. Before the issuance of such leases, it should also be established that the lessee can reasonably expect to be able to hire the required additional employees without interfering with other defense production.

(c) If the majority of the production under the proposed lease is for the Army or Navy, or if the proposed lessee has an existing facilities contract or lease with the Army or Navy, the proposed lessee will first be required to establish that he is unable to obtain the needed items of machinery and equipment from the other service before the Air Force will further consider leasing property to him. If it is established that the items cannot be acquired from the other service, the chief, APD, handling the case will complete his investigation of the other qualifications of the proposed lessee for eligibility and will determine the essentiality of the lease if the lessee is established as otherwise eligible. If the lessee is otherwise eligible and the lease is essential, the APD will report these facts to WRAMA (WRU), with a request that if the property is available, necessary action be taken to arrange with the other services for the transfer of the property to it for furnishing to the lessee by such other service. If it is impossible to transfer the property for the purpose under consideration, the other department may request the Air Force to execute the lease. The Air Force will not execute a lease for the support of production and/or services for another department of Government without a written request from the sponsoring department.

4. Add §§ 1013.3003-4 to 1013.3003-6, as follows:

§ 1013.3003-4 Determining essentiality.

If a proposed lessee is determined to be eligible, the CMR commander must then determine that the proposed lease is essential for defense production or development. Such determination must be recorded in writing. The requirements for essentiality are set forth in

§ 1013.3001(c). To determine essentiality the following procedures may be followed:

(a) Slippage of a current military production program may be assumed when there would be a failure to meet the required delivery schedules of one or more prime contracts. In such cases the particular prime contracts which could not be performed on schedule will be identified and recorded in the documentation supporting the determination of essentiality.

(b) If the proposed lessee is a subcontractor and is being sponsored by a Government prime contractor, it will be necessary for such prime contractor in addition to otherwise establishing a slippage of production to provide a certificate to the CMR commander advising of efforts made by him to obtain other sources for the supply items or components to be manufactured by the sponsored subcontractor which would not require the leasing of AF property.

§ 1013.3003-5 Determining availability of property.

(a) After a proposed lessee has been established as qualified for the requested lease and after the lease has been determined to be essential for defense production, the CMR commander will arrange for the lessee to screen the available property in the Departmental Industrial Equipment Reserve (DIER).

(b) When items desired by a proposed lessee are not available in the DIER, WRAMA (WRU), may arrange for the proposed lessee to screen the record of the Production Equipment Redistribution Group (PERG) at Washington, D.C. Items determined to be available in such screening will be processed in a manner similar to items available in the DIER, subject to existing Defense Department procedures relative thereto.

(c) When items are determined to be acceptable, a "hold" order (letter or electrically transmitted message) will be placed on the property by the agency having jurisdiction pending receipt of appropriate shipping requests.

(d) At the time of placing a "hold" order (letter or electrically transmitted message) on property for purposes of an AF lease, the agency having jurisdiction will advise the appropriate CMR headquarters of the determination of availability of the property and that a "hold" order has been placed thereon so that the CMR may continue with the processing of the lease. Such notification will provide the appropriate description of the property involved, the identification number of each item, and the value of the items for rental purposes. Upon receipt of such information, the CMR will proceed to issue the lease as expeditiously as possible.

(e) The availability for lease of items other than property in the DIER will be determined by the appropriate AMC center. (Nonstocklisted facilities.)

§ 1013.3003-6 Shipping authorizations.

(a) No items of property will be shipped to a proposed lessee until a lease has been executed by both the contractor and the Government and is in effect covering such property, except

when the following conditions are satisfied:

(1) The CMR has made the determinations set forth in § 1013.3001(b), (c), and (d).

(2) The proposed lessee has executed an acceptable agreement on MCP 71-648AA and a lease on MCP 71-648.

(3) All other requirements, except delivery of the property to be leased and execution of the lease by the Government, have been accomplished.

(b) After the above requirements have been met, the CMR having jurisdiction will request shipping authorization for stocklisted items from WRAMA (WRU). Shipping authorization on property other than that falling under the jurisdiction of the appropriate AMC center (nonstocklisted items) will be issued by the agency having jurisdiction over such property. Request for such shipping instructions will be addressed to that agency through the appropriate AMC center.

5. Add § 1013.3005-1, as follows:

§ 1013.3005-1 Continuing review of need for lease.

The administrative contracting officer has a continuing responsibility for reviewing the necessity for the continued existence of leases administered by him. When all or part of the property covered by a lease is no longer required for defense production but the lessee desires to retain it for other purposes, such property will be reported on an AMC Form 51 as in Idle Equipment Category VI. Such property will be left in place for use according to the lease terms until the lease expires unless: (a) The lessee terminates, (b) the lease is terminated by the Government for cause, or (c) the property is required for a more urgent defense program. Items reported in Category VI are considered to be available to fill current defense requirements for items not available in AF reserves and will be screened accordingly. When a requirement arises for such items WRAMA (WRU) will issue shipping instructions. Upon receipt of such instructions the CMR will issue a termination for the convenience of the Government pursuant to § 1013.3006-2.

6. Revise § 1013.3006-3 to read as follows:

§ 1013.3006-3 Other amendments to existing leases.

If it is determined necessary to make amendments to existing leases for purposes other than adding or removing items, such changes may be incorporated in an appropriate supplemental agreement to the lease. If the change does not involve a deviation from the standard authorized terminology, the change should be made subject to the approval of the CMR commander or his deputy commander without reference to higher authority. If the change involves deviations from the lease terms specified in subpart CC, Part 1007 of this chapter, the proposed supplemental agreement will be submitted to AMC (MCPMS) with a supporting file for submission to the Office of the Assistant Secretary of the Air Force for appropriate authoriza-

tion. As with other deviations, since such changes require approval at the Secretarial level, they should be kept to an absolute minimum.

7. Add §§ 1013.3007 to 1013.3007-3 as follows:

§ 1013.3007 Property damaged in transit.

§ 1013.3007-1 Report of survey.

When a lessee or a proposed lessee notifies the Government that Government property to be leased has been received in a damaged condition, the CMR will forthwith notify the carrier of the damaged shipment, effect an investigation, and accomplish DD Form 46, "Report of Survey (Discrepancies Incident to Shipment of Materiel)."

§ 1013.3007-2 Effecting repairs.

Upon completion of the AF investigation and after the carrier has completed its investigations, a base procurement contract will be issued without delay to effect the repair of the damages involved. The amount of the repair contract may be used to support the estimate of damages recorded on the DD Form 46.

§ 1013.3007-3 Reporting to finance officer.

When the Government Bill of Lading is forwarded to the accounting and finance officer with the appropriate notation of damages listed, the allotment out of which the repairs were paid should be stated thereon.

Subpart HH—Acquisition of Excess Nonstocklisted Facilities

Former Subpart HH is deleted and a new Subpart HH is inserted therefor:

- Sec.
1013.3400 Scope of subpart.
1013.3401 Applicability of subpart.
1013.3402 General conditions.
1013.3403 Responsibilities.
1013.3404 Procedure within Air Force.

AUTHORITY: §§ 1013.3400 to 1013.3404 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 1013.3400 Scope of subpart.

This subpart describes the responsibilities and procedures for acquisition and redistribution of excess items of plant equipment not controlled under regulations and instructions which implement the National Industrial Reserve Act of 1948.

§ 1013.3401 Applicability of subpart.

This subpart applies to all AF personnel responsible for acquisition and/or redistribution of plant equipment, within CONUS, which is not inventoried in the AF Departmental Industrial Equipment Reserve Inventory. Such equipment, for the purposes of this subpart, will be referred to as supporting plant equipment.

§ 1013.3402 General conditions.

(a) When items of plant equipment (as defined in § 13.101-9 of this title), of types not controlled under reserve inventory procedures (supporting plant equipment), must be provided to contractors according to § 1013.102-3, excess

Government property will be used to satisfy the requirement whenever possible.

(b) It is mandatory that shipping costs for the equipment covered by this subpart be kept to a minimum. The reallocation of such equipment will be made to authorized requiring contractors nearest the initial point of shipment. Exceptions to this procedure, due to urgency of program, must be approved by the AMC centers having allocation responsibility.

(c) Supporting plant equipment will be provided to an AF contractor only when each item is specifically identified and authorized for acquisition under its facilities contract or lease. In the absence of a facilities contract or lease, the equipment may be covered by the supply or service contract according to § 13.402 of this title. The buyer for the supply or service contract will secure the coordination and approval of a contracting officer from the Industrial Facilities Division of the AMC center prior to authorizing the acquisition of supporting equipment through a supply or service contract.

(d) Supporting plant equipment will not be shipped from production sites to central storage sites, but will be screened for reallocation at the site where declared excess. When an AF industrial plant is deactivated, the supporting equipment will remain on-site until screening for transfer or sale has been accomplished.

(e) Supporting plant equipment with an acquisition cost of \$500 or less will not be provided under contracts that do not have approved deviations according to § 1013.102-3(a) (10) (vii).

§ 1013.3403 Responsibilities.

(a) The prime or initial responsibilities for providing supporting plant equipment to contractors will be AMC centers.

(b) The air procurement districts and AF plant representatives Offices will be responsible for the necessary action in connection with the continuing requirements of the authorized contracts, under which the Government is obligated to furnish equipment, within their jurisdiction. They will not authorize acquisition under an AF contract without prior approval of the office of prime responsibility.

§ 1013.3404 Procedure within Air Force.

(a) When supporting plant equipment is declared excess to a contractor's requirement, and the total acquisition cost exceeds \$50,000, the cognizant APD or AFPRO will forward duplicate list of such equipment to each AMC center, with an information copy to the Directorate, Industrial Production Equipment, WRAMA. The AMC center having contract cognizance will advise the cognizant APD or AFPRO and (WRU) WRAMA within 5 days whether or not on-site screening is desired. Should screening be accomplished from the lists, written instructions will be issued by the cognizant AMC center to the appropriate APD or AFPRO regarding procedure, priorities, and shipping authorities.

Screening from lists will be completed within 15 days.

(b) When it is determined that on-site screening of property to be disposed of is desired, such screening will be made prior to submission of the equipment on termination inventory schedules (DD Form 543, "Inventory Schedule B") and within 30 days receipt of listing by the AMC center. Authorized contractors will be invited to screen by the cognizant AMC center. Screening on-site will be under the supervision of the cognizant AMC center. Authorization to ship will be issued by the cognizant AMC center.

(c) After on-site or list screening has been accomplished, the remaining equipment will be placed on DD Form 543 and submitted according to current instructions to WRAMA (WRU).

(d) When the inventory of excess supporting equipment has a total acquisition cost of less than \$50,000, it will be placed directly on DD Form 543 and processed according to Part 8 of this title and Part 1008 of this chapter.

(e) Shipping instructions for supporting equipment, selected from termination inventory schedules that have been submitted to WRU will be issued only by WRU.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1030—APPENDIXES TO AIR FORCE PROCUREMENT INSTRUCTIONS

An Appendix A is inserted as follows:

§ 1031.1 Appendix A—Armed Services Board of Contract Appeals.

CROSS REFERENCE: See § 1.314 of this title regarding instructions, provisions, procedures and formats for processing decisions and appeals pursuant to the appropriate Disputes clause in the contract and as set forth in § 7.103-12 of this title and § 1007.4205-8 of this chapter or in an authorized deviation thereto.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1054—CONTRACT ADMINISTRATION

1. Delete Subpart B, "Approval of Subcontracts" and Subpart E, "Decisions and Appeals Under Disputes Clause."

2. A new Subpart U is added as follows:

Subpart U—Work Request Procedures for Over and Above Work on Maintenance, Overhaul and Modification Contracts

Sec.
1054.2100 Scope of subpart.
1054.2101 Applicability of subpart.
1054.2102 Definition.
1054.2103 Use of work requests.
1054.2104 Processing of work requests.

AUTHORITY: §§ 1054.2100 to 1054.2104 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 1054.2100 Scope of subpart.

This subpart concerns responsibilities and procedures for processing and approval of: (a) Work requests; inseverable and (b) work requests; severable, issued pursuant to the Work Request clause (see § 1007.4065 of this chapter).

§ 1054.2101 Applicability of subpart.

This subpart applies to contract management regions, AMC field procurement activities, and air materiel forces.

§ 1054.2102 Definition.

(a) *Work request; inseverable.* An order for supplies or services so inseverable from the basic end item of work that failure to perform by the contractor would preclude performance of the basic work contemplated by the contract. For procedural reasons, the inseverable items of work require the issuance of work requests by the administrative contracting officer prior to performance by the contractor, even though the contract provides that the contractor is obligated to furnish the item and the Government obligated to order such item, if the requirement arises. Obligations for these items are recorded at the time the basic contract is definitized. The work request—inseverable is merely an administrative action by the contracting officer identifying and pricing the work to be performed.

Example. Authorization to provide parts required to overhaul the basic end item when the Government is unable to furnish same as GFP.

(b) *Work request; severable.* An order for supplies or services, the nature of which could not be determined at the inception of the contract, and wherein failure to furnish the supplies or perform these services would not preclude the contractor from performing the basic contract task. Obligations will be recorded at the time of issuing work requests—severable.

§ 1054.2103 Use of work requests.

(a) *Work request; inseverable.* This type of work request will be used to cover only indefinite quantity items which meet all of the following tests: (1) Are so inseverable from the basic end item that failure to perform the indefinite quantity item would preclude performance of the basic work contemplated by the contract, (2) the contract provides that the contractor is obligated to furnish the indefinite quantity item and the Government obligated to order such item, if the requirement arises, (3) the estimated cost of the indefinite quantity item is a bona fide estimate with factual support based on experience, and (4) the indefinite quantity item relates to an end item that is definite in quantity.

(b) *Work request; severable.* This work request procedure is properly applicable only to items of work, over and above that work which is required to fulfill the basic purpose of the contract, and for which the Government has no obligation to place an order. This procedure will not be used to effect new procurement that should be the subject of

a separate contract. Work requests—severable will not be used as a substitute for or in lieu of issuing supplemental agreements, CCNs, calls, or other contractual documents.

(c) Unless otherwise provided in the contracts, the administrative contracting officer (ACO) is the only individual authorized to issue a work request.

§ 1054.2104 Processing of work requests.

(a) Work requests will be in writing, serially numbered, dated, and bear the number and description of aircraft, engines, components, etc., affected. Work requests will also indicate unit and total prices to be paid (except when issued according to subparagraph (c) (1) of this section) and period of performance. Separate work requests will be issued for severable and inseverable items of work. In addition, work requests—severable will contain correct citation of funds from which payment will be made. The ACO will maintain files containing all work requests issued, as well as supporting data showing coordination of interested offices and contractor's acceptance.

(b) The work request—severable will be used as an obligating document.

(c) Work requests will not be issued until:

(1) A final fixed price has been negotiated between the contractor and ACO, except where the contract authorizes commencement of work contemplated prior to arrival at firm prices.

(2) Sufficient and proper funds are determined to be available.

(3) Whether the work called for by the work request is authorized by the contract.

(4) The quantity to be reworked is required.

(5) The delivery schedule is realistic and the effective point has been ascertained.

(6) The man-hours and material required are fair and reasonable.

(7) The work is necessary to return the material to a serviceable condition.

(8) The necessary specifications or technical directives are available.

(9) Whether all GFP received for repair has been listed on the work request.

(10) Whether reparables received are being placed on work requests.

(11) Whether all GFP listed on the work request is physically on hand and input from an appropriate source.

(12) Fairness and reasonableness of the unit and total price. The items in paragraph (c) of this section, to be considered when reviewing work requests, are a guide only, and the ACO will conduct his review to the extent and in such a manner as to assure that the work request to be issued, is in the best interests of the Government and contractually covered. In conducting such review, the ACO should develop internal procedures that will indicate that the factors listed under paragraph (c) of this section and other appropriate factors have been considered before issuing the work request.

PART 1060—BALLISTIC MISSILE AND SPACE SYSTEM PROGRAMS

A new Part 1060 is added as follows:

§ 1060.000 Scope of part.

This part will include policies and procedures for AMAs, APDs and AFPRs responsible for local administration of ballistic missile and space systems related programs, and to provide information and guidance on matters peculiar to these programs. Where possible, existing Armed Services Procurement Regulations and Air Force Procurement Instructions, and other existing regulations will be implemented and this part reserved for special subject matter not covered by other regulatory publications. AMCASC/AMCBMC will submit proposed regulations to MCPO, Hq AMC, for review, coordination, and publication.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

By order of the Secretary of the Air Force.

CARROLL W. KELLEY,
Lt. Col., U.S. Air Force, Chief,
Special Activities Group, Office of The Judge Advocate General.

[F.R. Doc. 61-8356; Filed, Sept. 1, 1961; 8:45 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 9—Atomic Energy Commission

PART 9-7—CONTRACT CLAUSES

Subpart 9-7.50—Use of Standard Clauses

NUCLEAR REACTOR SAFETY

Subpart 9-7.50 is amended by adding the following:

§ 9-7.5006-36 Nuclear Reactor Safety.

The following clause shall be incorporated in all contracts involving the start-up and/or operation of AEC-owned, nonlicensed reactors including critical facilities. Any deviation in substance affecting the meaning, intent, or basic principles of this clause must be referred to the Director, Division of Contracts, Headquarters for approval. Minor changes in wording which may become necessary in negotiations may be approved by the Manager of Operations after consultation with counsel.

(a) The Contractor recognizes that the activities under this contract involve the risk of a nuclear incident which, while the chances of its occurrence are remote, could adversely affect the public health and safety. In the conduct of its activities hereunder, the Contractor will exercise a degree of care commensurate with the risk involved.

(b) The Contractor shall comply with all regulations of the Commission concerning nuclear reactor safety and with those requirements (including reporting requirements and instructions) of the

Commission concerning nuclear reactor safety of which it is notified in writing by the Contracting Officer.

(c) Prior to the initial start-up of any nuclear reactor under this contract and prior to any subsequent start-up following a change which represents a significant deviation from the procedures, equipment, or analyses described in the Hazards Summary Report for that Reactor, the Contractor shall:

(1) Prepare a Hazard Summary Report and detailed plans and procedures designed to assure the safe operation and maintenance of the reactor. These will generally cover, but not be limited to: pre-start-up check lists; normal operation of the reactor and supporting auxiliaries; maintenance operation; emergency situations; and technical standards for equipment and systems.

(2) Submit such plans and procedures to, and secure the approval of, the Contracting Officer.

(3) Carry out a training program that will assure that the approved plans and procedures for nuclear safety are understood by all personnel who will be engaged in the operations and maintenance of the nuclear reactor.

(4) Obtain the approval of the Contracting Officer prior to such start-up of the reactor.

(d) In the operation and maintenance of any nuclear reactor under this contract, the Contractor shall:

(1) Assure that all operational and maintenance activities are performed by qualified and adequately trained personnel and, except as otherwise agreed in writing, are conducted at all times under the supervision of personnel who are qualified to appraise any emergency condition and take prompt effective action with respect thereto.

(2) Follow strictly the plans and procedures for nuclear safety approved by the Contracting Officer and submit to the Contracting Officer for his approval any proposed changes in such plans and procedures. The plans and procedures may specify certain areas in which the Contractor may make changes in operating and maintenance procedures and in the facility without Commission approval. All such changes shall be subject to review by a competent, independent, internal organization of the Contractor.

(3) Establish a system of inspection approved by the Contracting Officer (including review of inspection reports by competent technical personnel) that will

(i) provide frequent and periodic checks of reactor performance and of the qualifications and training of operating and maintenance personnel and (ii) provide for investigation of any unusual or unpredicted reactor conditions that might affect the safe operation of the reactor.

(4) Report promptly to the Contracting Officer any change in the physical condition of the reactor or its operating characteristics that might affect the safe operation of the reactor.

(5) Shut down the reactor immediately whenever so instructed by the Contracting Officer, or whenever, in the judgment of the Contractor the risk of

a nuclear incident endangering persons or property warrants such action.

(6) Prepare, in cooperation with other services and facilities available at the site and with the approval of the Contracting Officer, a plan for minimizing the effects of a nuclear incident upon the health and safety of the operating personnel and the public; instruct the personnel as to their participation in such plan and any personal risk to such personnel that may be involved; and participate in such practice exercises as may be desirable to assure the effectiveness of such plans.

These regulations are effective immediately upon publication.

Dated at Germantown, Md., this 25th day of August 1961.

For the Atomic Energy Commission.

R. E. HOLLINGSWORTH,
Acting General Manager.

[F.R. Doc. 61-8406; Filed, Sept. 1, 1961;
8:45 a.m.]

Chapter 50—Division of Public Contracts, Department of Labor

PART 50-202—MINIMUM WAGE DETERMINATIONS

Manifold Business Forms Industry

Pursuant to authority in the Walsh-Healey Public Contracts Act (41 U.S.C. 35), 41 CFR 50-202.29(d) (26 F.R. 7698) is amended as hereinbelow set out. This amendment will merely change the effective date of the minimum wage determination for Manifold Business Forms Industry from August 28, 1961 to September 16, 1961. The purpose of this change is to provide the full 30 day delay in effective date specified in section 4(c) of the Administrative Procedure Act.

§ 50-202.29 Manifold business forms industry.

* * * * *

(d) *Effective date.* This section shall be effective and the minimum herein shall apply as to all contracts subject to the Walsh-Healey Public Contracts Act, bids for which are solicited or negotiations otherwise commenced on or after September 16, 1961.

(Secs. 1, 4, 49 Stat. 2036, as amended, 2038; 41 U.S.C. 35, 38)

Signed at Washington, D.C., this 28th day of August 1961.

ARTHUR J. GOLDBERG,
Secretary of Labor.

[F.R. Doc. 61-8420; Filed, Sept. 1, 1961;
8:47 a.m.]

PART 50-202—MINIMUM WAGE DETERMINATIONS

Paper and Pulp Industry

On August 17, 1961, my final decisions determining the prevailing minimum wages for the paper and pulp industry and the manifold business forms industry were published in the FEDERAL REGISTER (26 F.R. 6798, 6799). Each provided a 7 day delay in its effective date

instead of the 30 day delay which had been provided in previous determinations. I remain of the view expressed in those decisions that good cause prompted this change, and I intend to give serious consideration to adopting it in future determinations when it will come as no surprise. I restored the 30 day delay period in the manifold business forms determination, however, on the protest of employers that there had been no previous intimation in the proceedings that such changes were under consideration. Though no such protest has been received in the paper and pulp industry, I am persuaded that fairness requires equal treatment. Accordingly, and pursuant to authority in the Walsh-Healey Public Contracts Act (41 U.S.C. 35), 41 CFR 50-202.33(d) is amended as hereinbelow set out:

§ 50-202.33 Paper and pulp industry.

* * * * *

(d) *Effective date.* This section shall be effective and the minimum wage herein shall apply as to all contracts subject to the Walsh-Healey Public Contracts Act, bids for which are solicited or negotiations otherwise commenced on or after September 16, 1961.

(Secs. 1, 4, 49 Stat. 2036, as amended, 2038; 41 U.S.C. 35, 38)

Signed at Washington, D.C., this 29th day of August 1961.

ARTHUR J. GOLDBERG,
Secretary of Labor.

[F.R. Doc. 61-8419; Filed, Sept. 1, 1961;
8:47 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2470]

[Anchorage 048978]

[1796532]

ALASKA

Revoking Public Land Order No. 781 of December 29, 1951; Withdrawing Lands for Use of the Department of the Army in Connection With the Alaska Communications System

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

1. Public Land Order No. 781 of December 29, 1951, which withdrew the following-described public lands in Alaska for use of the Department of the Army in connection with a radio receiving station for the Alaska Communication System, is hereby revoked:

CITY OF KODIAK AREA

Beginning at a point on line 3-4 of U.S. Survey 1669 (cancelled) from which corner No. 3 of the survey bears due East 400 feet, thence by metes and bounds:

S. 26°30' W., 820 feet to corner No. 1; N. 63°30' W., 2,500 feet to corner No. 2; N. 26°30' E., 2,500 feet to corner No. 3; S. 63°30' E., 800 feet approximately to a point 200 feet from Dark or Island Lake; Southwesterly, easterly, and northeasterly on a traverse 200 feet from and parallel to Dark or Island Lake to a point S. 63°30' E. approximately 1,500 feet from corner No. 3; S. 63°30' E., 1,000 feet, approximately; S. 26°30' W., 1,680 feet to point of beginning, containing approximately 113 acres.

2. Subject to valid existing rights, the following-described public lands forming a part of the lands described in paragraph 1 of this order, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws nor disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604), as amended, and reserved for use of the Department of the Army in connection with the Kodiak, Alaska Communications System Receiver Site:

Beginning at Corner No. 1 of U.S. Survey No. 3467, thence by metes and bounds N. 66°06' W., 7,348 chains along line 1-2 of U.S. Survey No. 3467 to the point of beginning, thence:

N. 66°06' W., 8,002 chains to a point; N. 26°30' E., 20,370 chains to a point; S. 89°23' E., 14,524 chains to a point of intersection on line 11-12 of said survey; S. 0°07' W., 2,689 chains to Corner No. 12 of said survey; S. 23°54' W., 2,804 chains to a point; S. 43°20' W., 22,090 chains to a point on line 1-2 of said survey and the point of beginning, containing 34.61 acres.

3. Until 10:00 a.m., on November 28, 1961, the State of Alaska shall have a preferred right to select the lands described in paragraph 1 of this order less those described in paragraph 2, in accordance with and subject to the limitations and requirements of the Act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b), section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), and the regulations in 43 CFR Part 76. Thereafter, the lands shall be subject to operation of the public land laws generally, including the mining and mineral leasing laws, subject to valid existing rights and equitable claims, the provisions of any existing withdrawals, and the requirements of applicable law, rules and regulations.

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

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

AUGUST 28, 1961.

[F.R. Doc. 61-8416; Filed, Sept. 1, 1961;
8:46 a.m.]

[Public Land Order 2471]

[Montana 043515 (SD)]

MONTANA

Revoking Public Land Order No. 85 of January 29, 1943

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

1. Public Land Order No. 85 of January 29, 1943, withdrawing the follow-

ing-described lands for use of the War Department as a gunnery range is hereby revoked:

BLACK HILLS MERIDIAN

T. 8 N., R. 9 E.,
Secs. 3, 4, 5, and 6.

T. 9 N., R. 9 E.,
Secs. 19 to 22, inclusive, and
Secs. 27 to 34, inclusive.

The areas described aggregate 10,002.03 acres.

2. Approximately 2369.36 acres were released from withdrawal by Public Land Order No. 932 of November 30, 1953. All of the remaining area is nonpublic land except lots 1 and 8 of section 22, T. 9 N., R. 9 E.

3. Until 10:00 a.m., on February 27, 1962, the State of Montana shall have a preferred right to select lots 1 and 8 section 22, T. 9 N., R. 9 E., in accordance with provisions of subsection (c) of section 2 of the Act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852). Beginning at 10:00 a.m., on February 27, 1962, the lands shall be subject to operation of the public land laws generally, including the mining and mineral leasing laws, subject to existing valid rights, to equitable claims, and the requirements of applicable law, rules, and regulations.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Billings, Montana.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

AUGUST 28, 1961.

[F.R. Doc. 61-8417; Filed, Sept. 1, 1961; 8:46 a.m.]

[Public Land Order 2472]

[Idaho 011675]

IDAHO

Opening Lands Subject to Section 24, Federal Power Act

In determination docketed DA-540 Idaho, the Federal Power Commission on May 25, 1960, determined that the value of the following-described lands withdrawn by Executive Order of March 3, 1913, as a part of Power Site Reserve No. 345, will not be injured or destroyed for purposes of power development by location, entry or selection under the public land laws, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818) as amended:

BOISE MERIDIAN

T. 21 N., R. 1 E.,
Sec. 2, lot 4.
Containing 36.63 acres.

2. By virtue of the authority vested in the Secretary of the Interior by section 24 of the Federal Power Act, the lands are hereby restored to the opera-

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tion of the public land laws, subject to any valid existing rights, to equitable claims if allowed and confirmed, the requirements of applicable law, rules and regulations, including the provisions of section 24 of the Federal Power Act and to the provisions of any existing withdrawals provided, that until 10:00 a.m., on February 27, 1962, the State of Idaho shall have a preferred right to apply to select the lands in accordance with subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852). It has waived its preference rights under Section 24 of the Federal Power Act.

The lands have been open to mineral leasing and to mining locations.

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

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

AUGUST 28, 1961.

[F.R. Doc. 61-8418; Filed, Sept. 1, 1961; 8:46 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce¹

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

[General Order 27, Rev. Amdt. 3]

PART 281—INFORMATION AND PROCEDURE REQUIRED UNDER OPERATING-DIFFERENTIAL SUBSIDY AGREEMENTS

Treatment of Subsidy During Period of Idleness, Lay-Up Period and Off-Hire Period

Section 281.4 is amended to read as follows:

§ 281.4 Treatment of subsidy during period of idleness, lay-up period and off-hire period.

During a lay-up period, subsidy shall be payable only for such subsidizable items of expense as are determined by the Maritime Administrator, after presentation by the operator of the facts relating to such lay-up period, to be necessary for the maintenance, preservation, repair, or husbanding of the vessel during and under the circumstances of such lay-up; however, the Maritime Subsidy Board reserves the right to suspend at any time the payment of subsidy on laid-up vessels when, after consideration of the facts and circumstances re-

garding such lay-up period, it determines that an unreasonable lay-up period has elapsed or such lay-up was not warranted: *Provided*, That as to a chartered ship operated under a "Use Agreement," operating-differential subsidy shall cease to accrue to the ship simultaneously with the time it goes "off hire" and subsidy shall not again accrue to said ship until it is reemployed in the subsidized service as determined in accordance with § 281.3. Nothing herein shall limit any other rights of the United States with respect to the payment or non-payment of subsidy.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

Dated: August 28, 1961.

THOS. E. STAKEM,
*Acting Maritime Administrator,
Chairman, Maritime Subsidy Board.*

[F.R. Doc. 61-8407; Filed, Sept. 1, 1961; 8:45 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER B—CARRIERS BY MOTOR VEHICLE

[Ex Parte No. MC-19]

PART 176—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Postponement of Effective Date of Order

Upon consideration of the record in the above-entitled proceeding; the institution on August 23, 1961, of an action before the United States District Court for the Southern District of California, Central Division, Civil Action No. 1108-61 HW, Movers Conference of America, et al. v. United States of America et al., to restrain, annul, enjoin and set aside the order of the Commission entered June 19, 1961 in the above-entitled proceeding; plaintiff's request for the further postponement of the effective date of the order in said docket from August 31, 1961 until further order of the Commission; and good cause appearing therefor:

It is ordered, That the effective date of the order of June 19, 1961, be, and it is hereby, postponed from August 31, 1961, until further order of the Commission.

Dated at Washington, D.C., this 28th day of August A.D. 1961.

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 61-8439; Filed, Sept. 1, 1961; 8:50 a.m.]

¹ Chapter heading changed. For continuation of functions, powers, and duties transferred by Reorganization Plan No. 7 of 1961 (26 F.R. 7315), see General Order 1, Federal Maritime Commission, 26 F.R. 7788.

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 81]

INSPECTION OF POULTRY AND POULTRY PRODUCTS

Notice of Proposed Rule Making

Notice is hereby given that the United States Department of Agriculture is considering the amendment of § 81.95 of the regulations governing the inspection of poultry and poultry products (7 CFR, as amended, Part 81) pursuant to authority contained in the Poultry Products Inspection Act (71 Stat. 441; 21 U.S.C. 451 et seq.) to add to said section a new paragraph (d) to read:

(d) The use of chemical additives in or on raw poultry products, other than salt (NaCl) which is added to chilling media in concentrations not in excess of 70 pounds to 10,000 gallons of water as aid in chilling, shall be permitted only when they are approved by the Administrator and when the products are to be consumer packaged and to bear complete labeling information under § 81.130, with a declaration of the additive used and the purpose for its use. Such declaration shall be shown prominently and conspicuously on the main panel of the label in addition to listing it in the statement of ingredients. The use of chemical additives, other than basic food stuffs and seasonings, in cooked poultry products shall be permitted only when they are approved by the Administrator and the products are to be consumer packaged, and the Administrator may require, in addition to the labeling information specified in § 81.130, a declaration of the additive used and the purpose of its use. Chemical additives, to be used in the preparation of poultry products, which have not been fully approved by the Administrator prior to the effective date of this amendment, will be considered for approval on the basis of the following criteria:

(1) The additive shall be nonpoisonous and nondeleterious.

(2) The additive shall produce a beneficial effect on the product.

(3) The additive shall not promote deception or cause the product to be otherwise adulterated, or unwholesome.

Scientific data from an impartial laboratory or research agency showing that the additive meets the criteria specified in this paragraph shall be submitted by the person interested in having the additive approved.

The foregoing proposal would result in requiring consumer packaging and informative labeling of poultry products which contain chemical additives. In addition, the amendment would establish the procedures to be followed in

obtaining approval of such additives for use in poultry products.

All persons who desire to submit written data, views or arguments in connection with the proposed amendment should file the same, in triplicate, with the Chief of the Standardization and Marketing Practices Branch, Poultry Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than 30 days following publication of this notice in the FEDERAL REGISTER.

(Sec. 14, 71 Stat. 447; 21 U.S.C. 463; 19 F.R. 74, as amended)

Issued at Washington, D.C., this 30th day of August 1961.

ROY W. LENNARTSON,
Associate Administrator,
Agricultural Marketing Service.

[F.R. Doc. 61-8452; Filed, Sept. 1, 1961;
8:52 a.m.]

DEPARTMENT OF LABOR

Division of Public Contracts

[41 CFR Part 50-202]

DRUGS AND MEDICINE INDUSTRY

Hearing To Redetermine Prevailing Minimum Wages

Pursuant to section 4 of the Administrative Procedure Act (60 Stat. 328; 5 U.S.C. 1003), notice is hereby given that a hearing to redetermine the prevailing minimum wages in the Drugs and Medicine Industry under section 1 of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35) will be held before a hearing examiner on October 17, 1961, at 10:00 o'clock, a.m., daylight saving time, in Conference Room C, Departmental Auditorium, Constitution Avenue between Twelfth and Fourteenth Streets NW., Washington 25, D.C. The drugs and medicine industry is defined tentatively as that industry which manufactures (or packages) drugs and medicinal preparations (other than food) intended for internal or external use in the diagnosis, treatment, or prevention of diseases in, or to affect the structure or any functions of, the body of men or other animals, including without limitation the following products: Bulk organic and inorganic medicinal chemicals and their derivatives; processed botanical drugs and herbs; endocrine products; basic vitamins; active medicinal principles, such as alkaloids from botanical drugs and herbs; drugs and medicines in pharmaceutical preparations, such as ampules, tablets, capsules, ointments, solutions, and suspensions for human and veterinary use, including vitamin preparations and galenicals, such as fluid extracts and tinctures; viruses,

serums, toxins, and analogous products, such as allergenic extracts, and normal serums and plasmas for human or veterinary use; and bacteriological media.

Interested persons may appear at the hearing to submit evidence relative to the following subjects and issues: (1) Any amendments which should be made in the tentative definition of the industry, (2) whether the geographic area of competition for contracts subject to the Walsh-Healey Public Contracts Act for products of the industry extends to all the area in which the industry has its establishments, so as to require industry-wide wage determination, or whether such competition is limited to smaller geographic areas (including the boundaries of such areas) so as to authorize separate wage determinations for each such area or locality, and (3) what are the prevailing minimum wages for the areas for which determinations should be made.

Written statements may be filed with the Chief Hearing Examiner at any time prior to the hearing by persons who cannot appear personally. An original and three copies of any such statement shall be filed and shall include the reason or reasons for non-appearance. Such statements shall be under oath or affirmation and will be offered in evidence at the hearing. If objection is made to the admission of any such statement, the presiding officer shall determine whether it will be received in evidence.

To the extent possible, the evidence of each witness and any sworn or affirmed statements of persons who cannot appear personally should permit evaluation on a plant-by-plant basis, and should state: (1) The number and location of establishments in the industry to which the testimony of such witness or such written statement is applicable, (2) the number of workers in each such establishment, (3) the minimum wage paid to covered workers (presently and, if possible, on March 15, 1961), and the number of covered workers (41 CFR 50-201.102) at each such establishment receiving such wages, and (4) the identity of any product not now included in the tentative definition of the industry which should be included and of any product now included which should not be included.

The hearing will be conducted pursuant to the rules of practice for minimum wage determinations under the Walsh-Healey Public Contracts Act codified in 41 CFR Part 50-203.

Signed at Washington, D.C., this 28th day of August 1961.

ARTHUR J. GOLDBERG,
Secretary of Labor.

[F.R. Doc. 61-8421; Filed, Sept. 1, 1961;
8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b) (5), 72 Stat. 1786; 21 U.S.C. 348(b) (5)), notice is given that a petition (FAP 545) has been filed by B. Heller and Company, Calumet Avenue and 40th Street, Chicago 53, Illinois, proposing the issuance of a regulation to provide for the safe use of sodium nicotinate at a level of 30 milligrams per pound in ground meat to promote color retention.

Dated: August 25, 1961.

[SEAL]

J. K. KIRK,
Assistant Commissioner
of Food and Drugs.

[F.R. Doc. 61-8433; Filed, Sept. 1, 1961;
8:49 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b) (5), 72 Stat. 1786; 21 U.S.C. 348(b) (5)), notice is given that a petition (FAP 538) has been filed by E. R. Squibb and Sons, Division of Olin Mathieson Chemical Corporation, Georges Road, New Brunswick, New Jersey, proposing the issuance of a regulation to provide for the safe use of nystatin in turkey feeds, as follows:

Period of administration	Purpose	Proposed addition
Continuously.....	For prevention of crop mycosis and mycotic diarrhea.	50 grams per ton.
7 days to 10 days..	For treatment of crop mycosis and mycotic diarrhea.	100 grams per ton.

Dated: August 25, 1961.

[SEAL]

J. K. KIRK,
Assistant Commissioner
of Food and Drugs.

[F.R. Doc. 61-8434; Filed, Sept. 1, 1961;
8:49 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b) (5), 72 Stat. 1786; 21 U.S.C. 348(b) (5)), notice is given that a petition (FAP 400) has been filed by Textile Bag Manufacturers Association, 518 Davis Street, Evanston, Illinois, proposing the issuance of a regulation to provide for

the safe use of printing inks, for the printing of burlap and cotton bags intended for the packaging of dry foods. The printing inks are made from the following substances:

Pigments and extenders:

Alkali blue.
Aluminum hydroxide.
Barium red.
Benzidine orange.
Benzidine yellow.
Calcium red.
Carbon black (channel).
Carbon black (furnace).
Clay.
Lithol reds (barium, calcium, and sodium).
Magnesium carbonate.
Milor blue.
Phthalocyanine blue.

Resins:

Dimerized rosin.
Glycerine ester of rosin.
Gum rosin.
Pentaerythritol ester of maleated rosin.
Pentaerythritol ester of rosin.
Tall oil rosin.
Utah fossil resin.
Wood rosin.

Oils and solvents:

Kerosene.
Linseed oil.
Mineral oil.
Pentaerythritol ester of fumarated linseed oil.
Petroleum hydrocarbon solvent (B.R. 548° F.-584° F.).
Soybean oil.
Tall oil.

Driers and compounds:

Cobalt linoleate.
Cobalt soyate.
Cobalt tallate.
Eugenol.
Petrolatum wax.
Polyethylene wax.

Dated: August 28, 1961.

[SEAL]

J. K. KIRK,
Assistant Commissioner
of Food and Drugs.

[F.R. Doc. 61-8435; Filed, Sept. 1, 1961;
8:49 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 601]

[Airspace Docket No. 61-FW-71]

CONTROLLED AIRSPACE

Designation of Control Zone

On August 31, 1961, there was published in the FEDERAL REGISTER (26 F.R. 8211, Airspace Docket No. 61-FW-71) a notice of proposed rule making stating that the Federal Aviation Agency has under consideration the designation of a control zone at the Lake Charles, La., Municipal Airport.

In accordance with the terms of the notice, the time for public comment was to expire forty-five days after date of publication of the notice. However, this was in error. The time for public comment was intended to be fifteen days. As indicated in the original notice, the proposed control zone was designed to provide protection for aircraft executing instrument approach and departure procedures at the new Lake Charles Municipal Airport which is expected to begin operations during the latter part of October 1961. The Federal Aviation Agency

Control Tower and the U.S. Weather Bureau Office will be moved from Chennault AFB to the new airport approximately October 25, 1961. To permit promulgation of an appropriate amendment to the Regulations of the Administrator which would conform to this time schedule, it is necessary to limit the period for public comment to fifteen days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), I hereby give notice that the time within which comments will be received for consideration on Airspace Docket No. 61-FW-71 is shortened to within fifteen days from date of publication of this Supplemental Notice in the FEDERAL REGISTER.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; U.S.C. 1348).

Issued in Washington, D.C., on August 31, 1961.

R. E. THOMAS,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 61-8482; Filed, Sept. 1, 1961;
8:53 a.m.]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[14 CFR Part 1245]

PROPOSED PATENT LICENSING REGULATIONS

Extension of Hearing Date

Notice of a public hearing on NASA "Proposed Patent Licensing Regulations," published in the FEDERAL REGISTER of July 15, 1961, 26 F.R. 6368, set the date of the hearing as of September 20, 1961, at 9:30 a.m. In order to provide adequate opportunity for all persons to appear, the notice is hereby amended to extend the hearing to include September 20, 1961, and the morning of September 21, 1961, at 9:30 a.m.

HUGH L. DRYDEN,
Deputy Administrator.

[F.R. Doc. 61-8447; Filed, Sept. 1, 1961;
8:51 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 270]

EXEMPTION OF CERTAIN BORROWING TRANSACTIONS

Notice of Withdrawal of Proposed Rule

The Securities and Exchange Commission, on August 25, 1960, in Investment Company Act Release No. 3102, announced that it had under consideration the adoption of Rule 17a-6 (§ 270.17a-6) under the Investment Company Act of 1940, pursuant to sections 6(c) and 38(a) thereof, which rule would exempt from

PROPOSED RULE MAKING

the prohibitions of section 17(a) (3) of the Act the borrowing of money from a bank which is controlled by a registered investment company by an officer, employee or director of such bank, subject to certain conditions. This announcement was published also in the FEDERAL REGISTER of September 1, 1960, 25 F.R. 8382.

The Commission has since determined that such borrowing transactions may appropriately be exempted by the issuance of an order, upon application by an interested person.

The Commission today announced that, after thorough consideration of the entire matter, it had decided not to adopt the proposed rule.

August 24, 1961.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F.R. Doc. 61-8423; Filed, Sept. 1, 1961;
8:47 a.m.]

Notices

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation BYLAWS OF CORPORATION

The bylaws of the Commodity Credit Corporation, as amended June 30, 1961, are as follows:

OFFICES

1. The principal office of the Corporation shall be in the City of Washington, District of Columbia, and the Corporation shall also have offices at such other places as it may deem necessary or desirable in the conduct of its business.

SEAL

2. There is impressed below the official seal which is hereby adopted for the Corporation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced.

MEETINGS OF THE BOARD

3. Regular meetings of the Board shall be held without notice in Room 200A in the United States Department of Agriculture in the City of Washington, D.C., on Tuesday of each week, or, if that day be a legal holiday, on the next succeeding business day, at 9:00 o'clock, a.m., unless notice of another hour is given.

4. Special meetings of the Board may be called at any time by the Chairman or by the President or the Executive Vice President and shall be called by the Chairman, the President, or the Executive Vice President at the written request of any four directors. Notice of special meetings shall be given either personally or by mail (including the intra-departmental mail channels of the Department of Agriculture or inter-departmental mail channels of the Federal Government) or by telegram, and notice by telephone shall be personal notice. Any director may waive in writing such notice as to himself, whether before or after the time of the meeting, and the presence of a Director at any meeting shall constitute a waiver of notice of such meeting. Except as is otherwise provided in paragraph 31 of these bylaws, any and all business may be transacted at a special meeting unless otherwise indicated in the notice thereof. Any and all business may be transacted at any special meeting at which every Director shall be present. No notice of an adjourned meeting need be given.

5. The Secretary of Agriculture shall serve as Chairman of the Board. In the absence or unavailability of the Chairman, the member of the Board who is President of the Corporation shall preside at meetings of the Board. In the absence or unavailability of the Chairman and the President, the Directors present at the meeting shall designate a Presiding Officer.

6. At any meeting of the Board a quorum shall consist of four Directors.

Except as otherwise provided in these bylaws, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board.

7. The General Counsel of the Department of Agriculture, whose office shall perform all legal work of the Corporation, and the Deputy General Counsel of the Department of Agriculture shall, as General Counsel and Deputy General Counsel of the Corporation, respectively, attend meetings of the Board.

8. The Vice Presidents, the Secretary and the Controller shall attend meetings of the Board.

9. The Director of each division of the Agricultural Stabilization and Conservation Service and, if the Director so desires, members of his staff designated by him, shall attend meetings of the Board during such times as the meetings are devoted to consideration of matters relating to his division.

10. Other persons may attend meetings of the Board upon specific authorization by the Chairman or the President.

COMPENSATION OF BOARD DIRECTORS

11. The compensation of each Director shall be prescribed by the Secretary of Agriculture. Any Director who holds another office or position under the Federal Government, the compensation for which exceeds that prescribed by the Secretary of Agriculture for such Director, may elect to receive compensation at the rate provided for such other office or position in lieu of compensation as a Director.

12. The officers of the Corporation shall be a President, Vice Presidents as hereinafter provided for, a Secretary, a Controller, a Treasurer, a Chief Accountant, and such additional officers as the Secretary of Agriculture may appoint.

13. The Under Secretary of Agriculture shall be ex officio President of the Corporation and the following Agricultural Stabilization and Conservation Service (referred to as ASCS) and Foreign Agricultural Service (referred to as FAS) officials shall be ex officio officers of the Corporation:

Administrator, ASCS, executive vice president.

Administrator, FAS, vice president.

Associate Administrator, ASCS, vice president.

Deputy Administrator, Price and Production, ASCS, vice president.

Deputy Administrator, Commodity Operations, ASCS, vice president.

Deputy Administrator, State and County Operations, ASCS, vice president.

Deputy Administrator, Management, ASCS, vice president.

Executive Assistant to the Administrator, ASCS, secretary.

Director, Fiscal Division, ASCS, controller.

Deputy Director (in Charge of Finance), Fiscal Division, ASCS, treasurer.

Deputy Director (in Charge of Accounting), Fiscal Division, ASCS, chief accountant.

14. The person occupying, in an acting capacity, the office of any person designated ex officio by these bylaws as an officer of the Corporation, shall, during his occupancy of such office, act as such officer.

15. Officers who do not hold office ex officio shall be appointed by the Secretary of Agriculture and shall hold office until their respective successors shall be appointed.

THE PRESIDENT

16. The President shall be Vice Chairman of the Board and shall perform such other duties as the Secretary or the Board may prescribe.

THE VICE PRESIDENTS

17. (a) The Executive Vice President shall be the chief executive officer of the Corporation and shall be responsible for submission of all policies and programs to the Board. Except as provided in paragraph (b) below, the Executive Vice President shall have general supervision and direction of the preparation of policies and programs for submission to the Board, of the administration of the policies and programs approved by the Board, and of the day to day conduct of the business of the Corporation and of its officers and employees.

(b) The Vice President who is the Administrator, Foreign Agricultural Service, shall be responsible for preparation for submission by the Executive Vice President to the Board of policies and programs for (i) export sales and subsidies, except those pertaining to the International Wheat Agreement, and (ii) barter involving export of agricultural commodities in exchange for strategic and other approved materials. He shall also have responsibility for the administration of those operations under policies and programs approved by the Board which are carried out through facilities and personnel of the Foreign Agricultural Service. He shall also perform such special duties and exercise such powers as may be prescribed from time to time by the Secretary of Agriculture, the Board, or the President of the Corporation.

(c) The other Vice Presidents shall assist the President and the Executive Vice President in the performance of their duties and the exercise of their powers to such extent as the President or the Executive Vice President shall prescribe, and shall perform such special duties and exercise such powers as may be prescribed from time to time by the Secretary of Agriculture, the Board, the President of the Corporation, or the Executive Vice President of the Corporation.

THE SECRETARY

18. The Secretary shall attend and keep the minutes of all meetings of the Board; shall attend to the giving and serving of all required notices of meetings of the Board; shall sign all papers

and instruments to which his signature shall be necessary or appropriate; shall attest the authenticity of and affix the seal of the Corporation upon any instrument requiring such action; and shall perform such other duties and exercise such other powers as are commonly ment requiring such action; and shall incidental to the office of Secretary as well as such other duties as may be prescribed from time to time by the President or the Executive Vice President.

THE CONTROLLER

19. The Controller shall have charge of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements, claims activities, and formulation of prices in accordance with established policies; and shall perform such other duties as may be prescribed from time to time by the President or the Executive Vice President.

THE TREASURER

20. The Treasurer, under the general supervision and direction of the Controller, shall have charge of the custody, safekeeping and disbursement of all funds of the Corporation; shall designate qualified persons to authorize disbursement of corporate funds; shall direct the disbursement of funds by disbursing officers of the Corporation or by the Treasurer of the United States, Federal Reserve Banks and other fiscal agents of the Corporation, and shall issue instructions incidental thereto; shall be responsible for documents relating to the general financing operations of the Corporation, including borrowings from the United States Treasury, commercial banks and others; shall arrange for the payment of interest on and the repayment of such borrowings; shall arrange for the payment of interest on the capital stock of the Corporation; shall co-ordinate and give general supervision to the claims activities of the Corporation and shall have authority to collect all monies due the Corporation, to receipt therefor and to deposit same for account of the Corporation; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed from time to time by the Controller.

THE CHIEF ACCOUNTANT

21. The Chief Accountant, under the general supervision and direction of the Controller, shall have charge of the general books and accounts of the Corporation and the preparation of financial statements and reports. He shall be responsible for the initiation, preparation and issuance of policies and practices related to accounting matters and procedures, including official inventories, records, accounting and related office procedures where standardized, and adequate subsidiary records of revenues, expenses, assets, and liabilities; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed from time to time by the Controller.

OTHER OFFICIALS

22. Except as otherwise authorized by the Secretary of Agriculture or the Board, the operations of the Corporation shall be carried out through the facilities and the personnel of the Agricultural Stabilization and Conservation Service and the Foreign Agricultural Service, in accordance with any assignment of functions and responsibilities made by the Secretary of Agriculture and, within his respective agency, by the Administrator of the Agricultural Stabilization and Conservation Service or the Administrator of the Foreign Agricultural Service.

23. The Directors of the divisions and commodity offices of the Agricultural Stabilization and Conservation Service shall be contracting officers and executives of the Corporation in general charge of the activities of the Corporation carried out through their respective divisions or offices. The responsibilities of such Directors in carrying out activities of the Corporation, which shall include the authority to settle and adjust claims by and against the Corporation arising out of activities under their jurisdiction, shall be discharged in conformity with these bylaws and applicable programs, policies, and procedures.

BONDS

24. Such officers and employees of the Corporation, including officers and employees of the Department of Agriculture who perform duties for the Corporation, as may be specified by the Secretary of Agriculture, shall be bonded in such manner, upon such conditions, and in such amounts as the Secretary of Agriculture may determine. The Corporation shall pay the premium of any bond or bonds.

CONTRACTS OF THE CORPORATION

25. Contracts of the Corporation relating to any of its activities may be executed in its name by the Secretary of Agriculture or the President. The Vice Presidents, the Controller, the Treasurer, the Directors of the divisions and commodity offices of the Agricultural Stabilization and Conservation Service may execute contracts relating to the activities of the Corporation for which they are respectively responsible.

26. The Executive Vice President and, subject to the written approval of the appointment by the Executive Vice President, the Vice Presidents, the Controller, the Directors of the divisions and commodity offices of the Agricultural Stabilization and Conservation Service may appoint, by written instrument or instruments, such Contracting Officers as they deem necessary, who may, to the extent authorized by such instrument or instruments, execute contracts in the name of the Corporation. A copy of each such instrument shall be filed with the Secretary.

27. Appointments of Contracting Officers may be revoked by written instrument or instruments by the Executive Vice President or by the official who made the appointment. A copy of each such instrument shall be filed with the Secretary.

28. In executing a contract in the name of the Corporation, an official shall indicate his title.

ANNUAL REPORT

29. The Executive Vice President shall be responsible for the preparation of an annual report of the activities of the Corporation, which shall be filed with the Secretary of Agriculture and with the Board.

AMENDMENTS

30. These bylaws may be altered or amended or repealed by the Secretary of Agriculture, or, subject to his approval, by action of the Board concurred in by at least four Directors at any regular meeting of the Board or at any special meeting of the Board, if notice of the proposed alteration, amendment, or repeal be contained in the notice of such special meeting or if every Director shall be present at such special meeting.

SUPERVISION OF CORPORATION AND BOARD

31. The Corporation and the Board shall be subject to the general supervision and direction of the Secretary of Agriculture, and the actions of the Board shall be subject to the approval of the Secretary of Agriculture.

I, Lionel C. Holm, Secretary, Commodity Credit Corporation, do hereby certify that the above is a full, true, and correct copy of the bylaws of Commodity Credit Corporation, adopted by the Board of Directors, Commodity Credit Corporation, at a meeting held June 29, 1961, and approved by the Secretary of Agriculture, effective close of business June 30, 1961.

In witness whereof I have officially subscribed my name and have caused the corporate seal of the said Corporation to be affixed this 25th day of August 1961.

[SEAL]

LIONEL C. HOLM,
Secretary,
Commodity Credit Corporation.

This notice given at Washington, D.C., this 25th day of August 1961.

[SEAL]

R. P. BEACH,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 61-8426; Filed, Sept. 1, 1961; 8:47 a.m.]

DEPARTMENT OF THE TREASURY

Bureau of Narcotics

NORACYMETHADOL (α -D1-3-ACETOXY-6-METHYLAMINO-4,4-DIPHENYL HEPTANE

Addition-Forming or Addiction-Sustaining Liability or Convertibility

Notice is hereby given pursuant to the provisions of section 4731(g) of the Internal Revenue Code of 1954 (26 U.S.C. 4731(g)), as amended by section 4(b) of the Narcotics Manufacturing Act of 1960 (74 Stat. 57), pursuant to 21 CFR 305.1, and pursuant to section 4 of the Administrative Procedure Act (60 Stat. 238, 5 U.S.C. 1003), and by virtue of the

authority vested in me by the Secretary of the Treasury (Treasury Department Order No. 180-5, August 3, 1960, 25 F.R. 7544), that, after having considered the technical advice of the Secretary of Health, Education and Welfare, a finding is proposed to be made that the following named drug possesses an addiction-forming or addiction-sustaining liability similar to morphine or is capable of conversion into a drug having an addiction-forming or addiction-sustaining liability similar to morphine with relative technical simplicity and degree of yield as to create a risk of improper use, and is an opiate: Noracymethadol (α -dl-3-acetoxy-6-methylamino-4,4-diphenyl heptane).

Consideration will be given to any written data, views or arguments pertaining to the proposed finding which are received by the Commissioner of Narcotics prior to October 4, 1961. Any person desiring to be heard on the proposed finding will be accorded the opportunity of a hearing in the office of the Commissioner of Narcotics, 1300 E Street NW., Washington 25, D.C., at 10:00 o'clock a.m., October 4, 1961, provided that such person furnishes written notice of his desire to be heard to the Commissioner of Narcotics, Washington 25, D.C., not later than 20 days from the publication of this notice in the FEDERAL REGISTER. If no written notice of a desire to be heard shall be received within 20 days from the date of publication of this notice in the FEDERAL REGISTER, no hearing shall be held.

[SEAL] HENRY L. GIORDANO,
Acting Commissioner of Narcotics.

Approved: August 25, 1961.

JAMES POMEROY HENDRICK,
Acting Assistant Secretary of the Treasury.

[F.R. Doc. 61-8444; Filed, Sept. 1, 1961; 8:51 a.m.]

Office of the Secretary
[AA 643.3-W]

HARDBOARD FROM BRAZIL

Determination of No Sales at Less Than Fair Value

AUGUST 28, 1961.

A complaint was received that hardboard from Brazil was being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that hardboard from Brazil is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. The information received indicates that the appropriate fair value comparison is between purchase price and the adjusted home market price.

The purchase price was computed on the basis of the packed price, f.o.b. Santos, Brazil. From this price there were deducted the total f.o.b. charges and inland freight. The adjusted home mar-

ket price was computed on the basis of the home market prices f.o.b. Sao Paulo, established as basic prices from which discounts are granted to purchasers in accordance with their category, such as wholesalers, retailers, etc. These prices are exclusive of packing. From the basic price there were deducted the trade discounts applicable to wholesalers, a cash discount, selling commission, allowances for advertising and technical services furnished on behalf of the wholesale customers, the cost of replacing defective hardboard, and the inland freight from the factory to the f.o.b. point. The cost of packing for exportation to the United States was added.

Purchase price was found not to be lower than the adjusted home market price except during a limited period at which time fluctuations in the purchasing power of the Brazilian cruzeiro resulted in a margin. The quantity imported to which the margin related, and the amount of the margin were not more than insignificant. The manufacturer has given assurance that future sales will not be at less than fair value.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Assistant Secretary of the Treasury.

[F.R. Doc. 61-8445; Filed, Sept. 1, 1961; 8:51 a.m.]

[AA 643.3-M]

PIG IRON FROM WEST GERMANY

Determination of No Sales at Less Than Fair Value

AUGUST 28, 1961.

A complaint was received that pig iron from West Germany was being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that pig iron from West Germany is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. Pig iron was received in the United States from two West German producers. One of the producers exported only an off-grade pig iron suitable for a very limited number of end uses. The other producer exported foundry-grade pig iron.

There was no market in Germany for the off-grade pig iron, nor was there found to be a similar grade of pig iron sold for home consumption. Exportations of the off-grade pig iron were also made to countries other than the United States; therefore, for fair value purposes purchase price was compared to third country sales prices. Purchase price was found to be not lower than third country price. Foundry-grade pig iron was sold for home consumption in Germany; therefore, home market price formed the basis for fair value. Purchase price was found to be less than home market price.

The producer of the foundry-grade pig iron has stated that there are no present arrangements to make further sales in the United States, and that it is very unlikely that such sales will be made in the near future. This producer has given assurance that if future sales are made in the United States, the price will not be less than fair value within the meaning of the Antidumping Act. The amount involved in the importations which showed an apparent dumping margin is considered to be not more than insignificant.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Assistant Secretary of the Treasury.

[F.R. Doc. 61-8446; Filed, Sept. 1, 1961; 8:51 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

LYKES BROS. STEAMSHIP CO., INC.

Notice of Application

Notice is hereby given that Lykes Bros. Steamship Company, Inc. has requested amendment of its operating-differential subsidy agreement so as to permit a maximum of 64 sailings during 1961 on its subsidized freight service on Trade Route No. 13 (U.S. Gulf and South Atlantic/Mediterranean and Black Sea).

Any person, firm or corporation desiring to comment upon said application of Lykes Bros. Steamship Company, Inc. should, by close of business on September 15, 1961, notify the Secretary, Maritime Subsidy Board, in writing, in triplicate, of the nature of the interest of such person, firm or corporation regarding said application. Prospective intervenors should state in detail the reasons for protest with a thorough documentation of such protest.

After giving due consideration to any comments received, or if no comments are received, the Maritime Subsidy Board will take such action as it deems appropriate.

Dated: August 29, 1961.

By order of the Maritime Subsidy Board.

GEO. A. VIEHMANN,
Assistant Secretary.

[F.R. Doc. 61-8408; Filed, Sept. 1, 1961; 8:45 a.m.]

ATOMIC ENERGY COMMISSION

BARRANCA MESA SUBDIVISION NO. 2

Delegation of Authority With Respect to Establishment of a Residential Area and to Sales of Building Lots

I hereby delegate to the Manager, Los Alamos Area Office, the following au-

thority with respect to establishment of a residential area on Barranca Mesa, Los Alamos County, New Mexico, and to sales of building lots in such residential area:

a. To select an area in Los Alamos County, New Mexico, to be identified as Barranca Mesa Subdivision No. 2.

b. To execute and cause to be recorded in the record books of the local government a plat of Barranca Mesa Subdivision No. 2, Los Alamos County, New Mexico, and in such plat to dedicate areas to the use of the public with the retention of such easements or other interests in dedicated areas as he deems appropriate.

c. To cooperate with other agencies of the Federal Government in establishing standards for the subdivision, and to make agreements with such agencies as to the observance of such standards.

d. To prepare such protective covenants insuring the quality of Barranca Mesa Subdivision No. 2 as he deems appropriate and to execute and cause them to be recorded in the record books of the local government.

e. To prepare, execute, and cause to be recorded in the record books of the local government a document embodying a guarantee to sell utilities to record owners of building lots in Barranca Mesa Subdivision No. 2 in accordance with delegation of authority dated March 10, 1958, from the General Manager, U.S. Atomic Energy Commission, to the Manager, Los Alamos Area Office.

f. To prepare, execute and cause to be recorded documents for the revocation, vacation, modification and withdrawal of the subdivision plat, protective covenants and utilities guarantee from the record books of the local government as may become necessary. Authority to revoke, vacate, or withdraw the subdivision plat, protective covenants, and utilities guarantee is limited solely to those portions of the subdivision, title to which still remains in the Government.

g. To fix the sale price of each lot in Barranca Mesa Subdivision No. 2, said price to be not less than the FHA appraised value.

h. To sell at not less than the FHA appraised value and convey the Government's interest in any lot in Barranca Mesa Subdivision No. 2, and to execute and administer the provisions of sale contracts, deeds, and modifications thereof and other documents in connection therewith.

i. To file documents, make determinations, and take such other action as is necessary or incidental to the establishment of Barranca Mesa Subdivision No. 2, the sale of lots in such subdivision, and the execution of documents or the administration of the provisions thereof.

Actions heretofore taken consistent with the authorities granted by this delegation are hereby ratified and confirmed.

The authorities granted by this delegation may also be exercised by any person acting in the stead of the above mentioned official.

Witness my hand this 17th day of July 1961.

A. R. LUEDECKE,
General Manager,
Atomic Energy Commission.

[F.R. Doc. 61-8405; Filed, Sept. 1, 1961;
8:45 a.m.]

[Docket No. 50-73]

GENERAL ELECTRIC CO.

Notice of Issuance of Utilization Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 2, set forth below, to Facility License No. R-33. Facility License No. R-33 authorizes General Electric Company to operate the Nuclear Test Reactor located at its Vallecitos Atomic Laboratory in Alameda County, California.

The amendment (1) authorizes operation of the reactor with a maximum of 30 cents net increase in reactivity due to heating of the moderator from operating temperature to the temperature at which the coefficient becomes negative, as requested by the licensee in its Amendment No. 5 to its license application dated June 29, 1961, (2) adds a condition regarding the procedures to be followed with respect to operations with the reactor shut down which might involve a change in core reactivity, and (3) adds a condition regarding written reports to be submitted by the licensee should any of the operating conditions or characteristics of the reactor which might affect nuclear safety vary significantly from its predicted value.

With respect to item (2) above, the Commission during January 1961 requested that each utilization facility licensee submit a written description of its procedures during operations with the reactor shut down which might involve a change in core reactivity. The Commission has reviewed the licensee's submission dated January 25, 1961, and believes that the procedures described therein minimize, to an acceptable degree, the potential for inadvertent criticality during operations which could involve changes in core reactivity when the reactor is shut down.

The Commission has found that operation of the reactor in accordance with the license as amended will not present undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has further found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since operation of the reactor in accordance with the license as amended would not present any substantial change in the hazards to the health and safety of the public from those previously considered and evaluated in connection with the previously approved operations.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within 30

days after the issuance of the license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the Commission's Public Document Room 1717 H Street NW., Washington, D.C.

For further details see (a) the application for license amendment, (b) a related hazards analysis prepared by the Research and Power Reactor Safety Branch of the Division of Licensing and Regulation, (c) the Commission's telegram dated January 10, 1961, to the licensee and (d) the licensee's reply dated January 25, 1961, all on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (b) above may be obtained at the Commission's Public Document Room, or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 28th day of August 1961.

For the Atomic Energy Commission.

EDSON G. CASE,
Chief, Research and Power Reactor
Safety Branch, Division
of Licensing and Regulation.

[License No. R-33; Amdt. 2]

License No. R-33 which authorizes General Electric Company to operate the Nuclear Test Reactor located at its Vallecitos Atomic Laboratory in Alameda County, California, is hereby amended as follows:

1. In addition to the activities previously authorized by License No. R-33, as amended, General Electric Company is authorized to operate the reactor with a maximum of 30 cents net increase in reactivity due to heating of the moderator from operating temperature to the temperature at which the coefficient becomes negative, as described in its Amendment No. 5 to its license application dated June 29, 1961. Such operation shall be conducted in accordance with the procedures and subject to the limitations contained in License No. R-33, as amended, and in General Electric Company's Amendment No. 5 to its license application dated June 29, 1961.

2. The following new conditions are added:
A. General Electric Company shall, with respect to operations which could involve changes in core reactivity when the reactor is shut down, follow the procedures described in its submission to the Commission dated January 25, 1961.

B. General Electric Company shall promptly submit a written report to the Commission whenever, during operation of the reactor, any of the operating conditions or characteristics of the reactor which might affect nuclear safety varies significantly from its predicted value.

This amendment is effective as of the date of issuance.

Date of issuance: August 28, 1961.

For the Atomic Energy Commission.

E. G. CASE,
Chief, Research and Power Reactor
Safety Branch, Division of
Licensing and Regulation.

[F.R. Doc. 61-8440; Filed, Sept. 1, 1961;
8:50 a.m.]

[Docket No. 50-112]

UNIVERSITY OF OKLAHOMA

Notice of Issuance of Utilization Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 2, set forth below, to Facility License No. R-53. The license authorizes University of Oklahoma to operate its nuclear reactor Model AGN-211, Serial No. 102, located on its campus in Norman, Oklahoma. The amendment adds conditions to the license regarding: (1) procedures to be followed with respect to operations with the reactor shut down which might involve a change in core reactivity, and (2) written reports to be submitted by the licensee should any of the operating conditions or characteristics of the reactor which might affect nuclear safety vary significantly from its predicted value.

With respect to item (1) above, the Commission during January 1961 requested that each utilization facility licensee submit a written description of its procedures during operations with the reactor shut down which might involve a change in core reactivity. The Commission has reviewed the licensee's reply dated January 18, 1961, and believes that there is little likelihood of an inadvertent criticality under the conditions described. In the interest of greater safety and to remove a possible ambiguity, however, an additional condition has been imposed by Amendment No. 2 to License No. R-53 to require that all operations which could involve changes in core reactivity when the reactor is shut down be conducted only under the direct and personal supervision of a technically qualified and designated supervisor.

The Commission has found that operation of the reactor in accordance with the license as amended will not present undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has further found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since operation of the reactor in accordance with the license as amended would not present any substantial change in the hazards to the health and safety of the public from those previously considered and evaluated in connection with the previously approved operations.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of issuance of the license amendment upon receipt of a request therefor from the licensee or an intervenor within 30 days after the issuance of the license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

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For further details see (a) the Commission's telegram dated January 10, 1961, to University of Oklahoma and (b) the University's reply dated January 18, 1961, both on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 28th day of August 1961.

For the Atomic Energy Commission.

EDSON G. CASE,
Chief, Research and Power Reactor
Safety Branch, Division
of Licensing and Regulation.

[License No. R-53; Amdt. 2]

License No. R-53, which authorizes University of Oklahoma to operate its nuclear reactor Model AGN-211, Serial No. 102, located on its campus in Norman, Oklahoma, is hereby amended by adding the following additional conditions thereto:

1. University of Oklahoma shall comply with the procedures and precautions described in its report to the Commission dated January 18, 1961, and the additional condition that core loading changes and all other operations which could involve changes in core reactivity when the reactor is shut down shall be conducted only under the direct and personal supervision of a technically qualified and designated supervisor.
2. University of Oklahoma shall promptly submit a written report to the Commission whenever, during operation of the reactor, any of the operating conditions or characteristics of the reactor which might affect nuclear safety varies significantly from its predicted value.

This amendment is effective as of the date of issuance.

Date of issuance: August 28, 1961.

For the Atomic Energy Commission.

E. G. CASE,
Chief, Research and Power Reactor
Safety Branch, Division of Li-
censing and Regulation.

[F.R. Doc. 61-8441; Filed, Sept. 1, 1961;
8:50 a.m.]

[Docket No. 50-135]

WALTER REED ARMY INSTITUTE OF RESEARCH

Notice of Proposed Issuance of Facility License

Please take notice that, unless within fifteen days after the publication of this notice in the FEDERAL REGISTER a request for a formal hearing is filed with the United States Atomic Energy Commission by the applicant or in the case of an intervenor a petition for leave to intervene and a request for hearing is filed as provided by the Commission's rules of practice (Title 10, Chapter I, Part 2), the Commission proposes to issue to Walter Reed Army Institute of Research, a facility license substantially in the form annexed authorizing the possession and operation of a nuclear reactor at power levels up to 50 kilowatts (thermal). Prior to issuance of the license the facility will be inspected by representatives of the Commission to determine whether it has been constructed in accordance with the provisions of Construction Permit No. CPRR-48. Petitions for leave to intervene and requests for a formal hearing

shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street NW., Washington, D.C.

For further details see (1) the application and amendments thereto, and (2) a hazards analysis prepared by the Hazards Evaluation Staff of the Division of Licensing and Regulation, both on file at the AEC's Public Document Room. A copy of item (2) above may be obtained at the AEC's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 28th day of August 1961.

For the Atomic Energy Commission.

M. B. BILES,
Chief, Test and Power Reactor
Safety Branch, Division of
Licensing and Regulation.

1. This license applies to the homogeneous solution type, Atomics International Model L-54 nuclear reactor (hereinafter referred to as "the reactor") which is owned by Walter Reed Army Institute of Research and located on the Walter Reed Army Medical Center site in Washington, D.C., and described in the Institute's application for license dated May 20, 1959, and amendments thereto dated June 15, 1959, June 29, 1959, March 10, 1960, June 28, 1960, April 3, 1961, April 5, 1961, and August 7, 1961 (hereinafter collectively referred to as "the application"), and authorized for construction by Construction Permit No. CPRR-48 issued to Walter Reed Army Institute of Research.

2. Pursuant to the Atomic Energy Act of 1954, as amended (hereinafter referred to as "the Act") and having considered the record in this matter, the Atomic Energy Commission (hereinafter referred to as "the Commission") finds that:

A. The reactor has been constructed in conformity with Construction Permit No. CPRR-48 and will operate in conformity with the application as amended and in conformity with the Act and the rules and regulations of the Commission;

B. There is reasonable assurance that the reactor can be operated at the designated location without endangering the health and safety of the public;

C. Walter Reed Army Institute of Research is technically and financially qualified to operate the reactor, to assume financial responsibility for payment of Commission charges for special nuclear material and to undertake and carry out the proposed activities in accordance with the Commission's regulations;

D. The possession and operation of the reactor and the receipt, possession and use of the special nuclear material in the manner proposed in the application will not be inimical to the common defense and security or to the health and safety of the public.

E. Walter Reed Army Institute of Research is a Federal Agency and need not furnish proof of financial protection as would otherwise be required by subsection 170a of the Act.

3. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses Walter Reed Army Institute of Research:

A. Pursuant to section 104c of the Act and Title 10, CFR, Chapter I, Part 50, "Licensing of Production and Utilization Facilities", to

possess and operate the reactor as a utilization facility at the designated location in Washington, D.C., in accordance with the procedures and limitations described in the application and this license;

B. Pursuant to the Act and Title 10, CFR, Chapter I, Part 70, "Special Nuclear Material", to receive, possess and use up to 1.325 kilograms of contained uranium 235 in connection with operation of the reactor; and

C. Pursuant to the Act and Title 10, CFR, Chapter I, Part 30, "Licensing of Byproduct Material", to possess, but not to separate, such byproduct material as may be produced from operation of the reactor.

4. This license shall be deemed to contain and be subject to the conditions specified in § 30.32 of Part 30, § 50.54 of Part 50 and § 70.32 of Part 70, Title 10, Chapter I, CFR, and to be subject to all applicable provisions of the Act and to the rules, regulations and orders of the Commission now or hereafter in effect, and to the additional conditions specified below:

A. Walter Reed Army Institute of Research shall not operate the reactor at power levels in excess of 50 kilowatts (thermal) without prior written authorization from the Commission.

B. As promptly as practicable, but no later than sixty days after the initial criticality of the reactor, Walter Reed Army Institute of Research shall submit a written report to the Commission describing the measured values of the operating conditions or characteristics listed below and evaluating any significant variation of a measured value from the corresponding predicted value:

(1) Maximum excess reactivity of the reactor, not including the worth of control rods or other control devices such as burnable poison strips or soluble poison, or any experiments;

(2) Total control rod worth;

(3) Minimum shutdown margin both at room and operating temperature;

(4) Maximum worth of the single control rod of highest reactivity value; and

(5) Maximum total and individual worth of any fixed or movable experiments inserted in the reactor.

C. Walter Reed Army Institute of Research shall comply with the shutdown procedures and precautions described in its submittal to the Commission dated April 5, 1961, and the following additional limitations:

(1) Walter Reed Army Institute of Research shall maintain nuclear control instrumentation in operation and shall assure that such instrumentation is attended and observed at all times during operations which could involve changes in core reactivity when the reactor is shutdown.

(2) Walter Reed Army Institute of Research shall conduct core loading changes and all other operations which could involve changes in core reactivity when the reactor is shutdown only under the direct and personal supervision of a technically qualified and designated supervisor.

D. In addition to those otherwise required under this license and applicable regulations, Walter Reed Army Institute of Research shall keep the following records:

(1) Reactor operating records, including power levels.

(2) Records of in-pile irradiations.

(3) Records showing radioactivity released or discharged into the air or water beyond the effective control of Walter Reed Army Institute of Research as measured at the point of such release or discharge.

(4) Records of emergency reactor scrams, including reasons for emergency shutdowns.

E. Walter Reed Army Institute of Research shall immediately report to the Commission in writing any indication or occurrence of a possible unsafe condition relating to the operation of the reactor.

F. Walter Reed Army Institute of Research shall promptly submit a written report to

the Commission whenever, during operation of the reactor subsequent to initial criticality, any of the operating conditions or characteristics of the reactor, including those described in paragraph 4.B. above and the application, as amended, which might affect nuclear safety, is observed to vary significantly from its predicted value.

5. Pursuant to § 50.60 of the regulations in Title 10, Chapter I, CFR, Part 50, the Commission has allocated to Walter Reed Army Institute of Research for use in operation of the reactor, 1.325 kilograms of uranium 235 contained in uranium in the isotopic ratio specified in the application.

6. This license is effective as of the date of issuance and shall expire at midnight January 6, 1980.

Date of issuance:

For the Atomic Energy Commission.

[F.R. Doc. 61-8442; Filed, Sept. 1, 1961; 8:51 a.m.]

FEDERAL AVIATION AGENCY

[OE Docket No. 61-LA-12]

PROPOSED RADIO ANTENNA STRUCTURES

Determination of No Hazard to Air Navigation

The Federal Aviation Agency has circularized the following proposal to interested persons for aeronautical comment and has conducted a study to determine its effect upon the safe and efficient utilization of airspace: The Helix Broadcasting Company, Anaheim, California, proposes to construct an array of four radio antenna structures near La Mesa, California, with the center of the array at latitude 32°47'18" north, longitude 117°00'21" west. The structures would be spaced 179.7 feet apart on a line bearing 17° true. The overall height of the structures would range from 806 feet above mean sea level to 821 feet MSL (each structure 206 feet above ground).

Objections were made in response to the circularization based upon the conclusion of the objectors that the array would interfere with aeronautical operations at San Diego County, Gillespie Field, California, and with Visual Flight Rules operations between San Diego, California, and Gillespie Field. At the FAA Regional Airspace Meeting, held in Los Angeles, California, on March 8, 1961, the California State Director of Aeronautics objected on the basis that the structures would be located on a VFR fly-way. No objections were made at the Washington Informal Airspace Meeting held on May 5, 1961.

The proposed structures would be located 3 miles southwest of Gillespie Field (elevation 386 feet MSL) and would exceed the inner conical surface criteria of the Joint Industry/Government Tall Structures Committee as applied to the above airport, by 215 feet. Terrain between the proposed site and Gillespie Field exceeds the height of the proposed structure and penetrates the JIGSTC criteria to a greater extent than would the structure. The traffic pattern prescribed for the above field is 1,100 feet above airport elevation and 1.5 miles

northeast of the proposed site. The structures would be located 0.6 mile north of a prominent east/west highway, however, terrain at a height of 852 feet MSL is located 2.8 miles west of the proposed site and 0.6 mile north of the above highway. Therefore, the proposed structure would be shielded by surrounding terrain of a greater height and would not adversely affect aeronautical operations at Gillespie Field or VFR flight operations between San Diego and that airport.

No other aeronautical operations, procedures or minimum flight altitudes would be affected by the proposed structures.

Therefore, pursuant to the authority delegated to me by the Administrator (14 CFR 626.33; 26 F.R. 5292), it is concluded that the proposed structures, at the locations and mean sea level elevations specified herein, would have no adverse effect upon aeronautical operations, procedures or minimum flight altitudes; and it is hereby determined that this antenna array would not be a hazard to air navigation, provided that each structure be obstruction marked and lighted in accordance with applicable Federal Communications Commission rules.

This determination is effective as of the date of issuance and will become final 30 days thereafter, provided that no appeal herefrom under § 626.34 (26 F.R. 5292) is granted. Unless otherwise revised or terminated a final determination hereunder will expire 18 months after its effective date or upon earlier abandonment of the construction proposal (§ 626.35; 26 F.R. 5292).

Issued in Washington, D.C., on August 23, 1961.

FRANK T. HAPPY,
Acting Chief,
Obstruction Evaluation Branch.

[F.R. Doc. 61-8409; Filed, Sept. 1, 1961; 8:45 a.m.]

FEDERAL MARITIME COMMISSION

TORM TRAMPING CO. A/S AND TRANSATLANTIC & PACIFIC STEAMSHIP LINES, INC.

Notice of Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement Numbered 8620, between Torm Tramping Company A/S and Transatlantic & Pacific Steamship Lines, Inc., covers the establishment and maintenance of a joint cargo service (with limited passenger accommodations) under the trade name "Peralta Line" in the trade between Canadian and U.S. Atlantic and U.S. Gulf ports, on the one hand, and ports in the United Kingdom and the Bordeaux/Hamburg Range, on the other.

Interested parties may inspect this agreement and obtain copies thereof at

the Office of Regulations, Federal Maritime Commission, Washington, D.C., and may submit within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: August 30, 1961.

By order of the Federal Maritime Commission.

GEO. A. VIEHMANN,
Acting Secretary.

[F.R. Doc. 61-8451; Filed, Sept. 1, 1961;
8:52 a.m.]

FEDERAL POWER COMMISSION

[Docket No. RI62-31]

CONTINENTAL OIL CO.

Order Providing for Hearing on and Suspension of Proposed Change in Rate and Allowing Rate To Become Effective Subject To Refund

AUGUST 29, 1961.

On August 7, 1961, Continental Oil Company (Continental)¹ tendered for filing a proposed change in rate relating to sales of natural gas to Phillips Petroleum Company (Phillips), from the producing area of Weiner-Emperor Field, Winkler County, Texas. The filing, designated Supplement No. 2 to Continental's FPC Gas Rate Schedule No. 155, proposes an increase from 6.0 cents to 9.46656 cents per Mcf at a pressure base of 14.65 psia, and represents an annual increase of \$4,721. Continental requests an effective date of September 7, 1961.

Although Continental's proposed rate is below the area level as set forth in the Commission's Statement of General Policy No. 61-1, it is based upon the increased resale rate of Phillips to El Paso Natural Gas Company presently in effect subject to refund in Docket No. RI61-30, and is therefore being suspended for one day.

The rates may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the above-described rate and that the above-designated rate schedule be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:
(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held upon the date to be fixed by notice

from the Secretary concerning the lawfulness of the above-described rate contained in the above-designated rate schedule.

(B) Pending hearing and decision thereon, Continental's FPC Gas Rate Schedule No. 155 is suspended and the use thereof deferred until September 8, 1961, and until such time as it is made effective in the manner prescribed by the Natural Gas Act: *Provided, however*, That Continental's said rate schedule shall become effective September 8, 1961, if within 20 days from the date of the issuance of this order, it shall execute and file in this proceeding an agreement and undertaking to comply with the refunding and reporting procedures required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved. Unless Continental is advised to the contrary within 15 days after the filing of such agreement and undertaking, the agreement and undertaking shall be deemed to have been accepted.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before October 9, 1961.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-8411; Filed, Sept. 1, 1961;
8:46 a.m.]

[Docket No. CP62-17]

UNITED GAS PIPE LINE CO.

Notice of Application and Date of Hearing

AUGUST 29, 1961.

Take notice that on July 20, 1961, as supplemented on August 7, 1961, United Gas Pipe Line Company (Applicant), 1525 Fairfield Avenue, Shreveport, Louisiana, filed in Docket No. CP62-17 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 0.2462 mile of 2-inch pipeline, a sales meter station, and appurtenant facilities at a point near the National Compress & Warehouse Company, Inc., plant site, and the acquisition of meter station facilities from Tennessee Gas Transmission Company (Tennessee), all located near Drew in Sunflower County, Mississippi, all as more fully set forth in the application and supplement which are on file with the Commission and open to public inspection.

The proposed facilities are stated to be necessary to provide gas deliveries from Tennessee to Applicant for delivery to United Gas Corporation for resale to National Compress & Warehouse Company, Inc., for boiler fuel and miscellaneous uses.

The estimated total cost of the proposed facilities is \$11,760 of which \$8,110 is for construction by Applicant and \$3,650 for the acquisition from Tennessee, and all of which will be financed out of current working funds.

The estimated peak day and annual sales volumes for National Compress & Warehouse Company, Inc. during the third year of operations are 675 Mcf and 20,200 Mcf respectively.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on October 3, 1961, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before September 22, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-8412; Filed, Sept. 1, 1961;
8:46 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30-XI-11,
Amdt. 1]

BRANCH MANAGER, ALBUQUERQUE BRANCH OFFICE

Delegation Relating to Financial Assistance, Procurement and Technical Assistance, and Administrative Functions

Delegation of Authority No. 30-XI-11 (25 F.R. 3092), is hereby amended by

¹P.O. Box 2197, Houston 1, Tex.

deleting Section A, *Financial assistance*, in its entirety.

Effective date. August 1, 1961.

HAROLD R. SMETHILLS,
Regional Director,
Denver Regional Office.

[F.R. Doc. 61-8443; Filed, Sept. 1, 1961;
8:51 a.m.]

TARIFF COMMISSION

DRIED FIGS

Reports to the President

AUGUST 30, 1961.

The U.S. Tariff Commission today submitted to the President its eighth periodic report on the developments in the trade in dried figs since the "escape clause" action, on August 30, 1952, modifying the concession granted in the General Agreement on Tariffs and Trade on such figs classifiable under paragraph 740 of the Tariff Act of 1930. This report was made pursuant to paragraph 1 of Executive Order 10401 of October 14, 1952, which order prescribes procedures for the periodic review of escape-clause actions. Such review is limited to the determination of whether a concession that has been modified or withdrawn can be restored in whole or in part without causing or threatening serious injury to the domestic industry concerned.

In submitting its report, the Commission advised the President that the conditions of competition between imported and domestic dried figs had not so changed as to warrant the institution of a formal investigation under the provisions of paragraph 2 of Executive Order 10401. This means that, in the Commission's view, the developments in the trade in dried figs do not warrant a formal inquiry into the question of whether a reduction in the duties on dried figs could be made without resulting in serious injury to the domestic industry concerned.

Copies of the Commission's report are available upon request as long as the limited supply lasts. Requests should be addressed to the U.S. Tariff Commission, Eighth and E Streets NW., Washington 25, D.C.

[SEAL]

DONN N. BENT,
Secretary.

[F.R. Doc. 61-8448; Filed, Sept. 1, 1961;
8:52 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management ALASKA

Notice of Filing of Plat of Survey

AUGUST 25, 1961.

1. Plat of the extension survey of the lands described below will be officially filed in the Anchorage Land Office, Anchorage, Alaska, effective at 10:00 a.m., September 15, 1961.

SEWARD MERIDIAN

SUMMIT ISLAND

T. 15 S., R. 65 W.,
Sec. 31: all.
Total 198.74 acres.
T. 16 S., R. 65 W.,
Sec. 6: all.
Total 94.55 acres.
T. 15 S., R. 66 W.,
Sec. 24: all;
Sec. 25: all;
Sec. 26: all;
Sec. 36: all.
Total 653.71 acres.
T. 16 S., R. 66 W.,
Sec. 1: all.
Total 3.33 acres.
Total 950.33 acres.

HIGH ISLAND

T. 16 S., R. 67 W.,
Sec. 31: all.
Total 200.68 acres.
T. 17 S., R. 67 W.,
Sec. 5: All;
Sec. 6: All;
Sec. 7: All;
Sec. 8: All;
Sec. 17: All;
Sec. 18: All;
Sec. 19: All;
Sec. 30: All.
Total 2,666.24 acres.
T. 17 S., R. 68 W.,
Sec. 1: All;
Sec. 12: All;
Sec. 13: All;
Sec. 24: All;
Sec. 25: All.
Total 587.60 acres.
Total, 3,454.52 acres.

CROOKED ISLAND AND BLACK ROCK ISLANDS

T. 17 S., R. 66 W.,
Sec. 16: All;
Sec. 30: All;
Sec. 31: All.
Total 273.48 acres.
T. 18 S., R. 66 W.,
Sec. 6: All.
Total 33.60 acres.
T. 17 S., R. 67 W.,
Sec. 2: All;
Sec. 11: All;
Sec. 12: All;
Sec. 13: All;
Sec. 14: All;
Sec. 15: All;
Sec. 22: All;
Sec. 23: All;
Sec. 24: All;
Sec. 25: All;
Sec. 26: All;
Sec. 27: All;
Sec. 36: All.
Total 3,380.26 acres.
T. 18 S., R. 67 W.,
Sec. 1: all;
Sec. 12: all.
Total 351.26 acres.
Total 4,038.60 acres.

TWIN ISLANDS

T. 18 S., R. 67 W.,
Sec. 23: all;
Sec. 26: all;
Sec. 27: all.
Total 19.36 acres.
Grand total 8,462.81 acres.

2. These lands are part of the Walrus Island group located in the Bristol Bay Alaska Area.

3. The public lands affected by this order are hereby restored to the operation of the public land laws, subject to any valid existing rights, the provisions of existing withdrawals, and the require-

ments of applicable law, rules and regulations.

4. The greater part of the lands affected by this notice has been selected by the State of Alaska in accordance with and subject to the limitations and requirements of the Alaska Statehood Act of July 7, 1958 (52 Stat. 339), and the regulations in 43 CFR 76.1 to 76.18.

5. Inquiries concerning the lands should be addressed to the Manager, Land Office, Anchorage, Alaska.

ALFRED P. STEGER,
Acting Manager,
Anchorage Land Office.

[F.R. Doc. 61-8414; Filed, Sept. 1, 1961;
8:46 a.m.]

[Order 685]

STATE DIRECTORS

Delegation of Authority; Allowance for Quarters, Subsistence and Services

AUGUST 28, 1961.

SECTION 1. *Authority to fix rates.* (a) Pursuant to the authority contained in DM Part 205 Chapter 10 the State Directors are authorized to fix rates for all quarters, subsistence, and services which are provided by the Government in their respective States, in accordance with the standards prescribed in the Manual of Allowances for Quarters, Subsistence, and Services, and such other regulations on this subject as may be issued by the Secretary.

(b) The State Directors are authorized to appoint Quarters Evaluation Boards. Such Boards shall be responsible for recommending the rates which are to be fixed as provided in subsection (a) of this section.

(c) After the State Director determines, pursuant to the provisions of section 1413 of the Act of July 15, 1952 (66 Stat. 661), that necessary service cannot be rendered or property of the United States cannot be protected adequately otherwise, he may require an officer or employee of his State to occupy Government-owned quarters. Copies of all actions taken pursuant to this subsection shall be forwarded to the Washington office, and to the Administrative Field office.

SEC. 2. *Revocation.* Bureau Order No. 516 of April 30, 1953, is revoked.

KARL S. LANDSTROM,
Director.

[F.R. Doc. 61-8415; Filed, Sept. 1, 1961;
8:46 a.m.]

Office of the Secretary

JOHN L. McNEALEY

Notice of Appointment and Statement of Financial Interests

AUGUST 30, 1961.

Pursuant to section 302(a) of Executive Order 10647, the following information on a WOC appointee in the Department of the Interior is furnished for publication in the FEDERAL REGISTER.

Name of appointee: John L. McNealey.
Name of employing agency: Department of the Interior, Office of Assistant Secretary for Water and Power Development.

The title of the appointee's position: Director, Defense Electric Power Area 7.
The name of the appointee's private employer or employers: Columbus and Southern Ohio Electric Company, Columbus, Ohio.

The statement of "financial interests" for the above appointee is enclosed.

STEWART L. UDALL,
Secretary of the Interior.

STATEMENT OF FINANCIAL INTERESTS

In accordance with the requirements of section 302(b) of Executive Order 10647, I am filing the following statement for publication in the FEDERAL REGISTER:

(1) Names of any corporations of which I am, or had been within 60 days preceding my appointment, on August 4, 1961, as Director, DEPA Area 7, Office of Assistant Secretary, Water and Power Development, Department of Interior, an officer or director:

Columbus and Southern Ohio Electric Company, Executive Vice President.
Columbus Transit Company, Director.

(2) Names of any corporations in which I own, or did own within 60 days preceding my appointment, any stocks, bonds, or other financial interests:

Columbus and Southern Ohio Electric Co.
TXL Oil Corp.
Gas Hills Uranium Co.

(3) Names of any partnerships in which I am associated, or had been associated within 60 days preceding my appointment:

None.

(4) Names of any other businesses which I own, or owned within 60 days preceding my appointment:

None.

Dated: August 24, 1961.

J. L. McNEALEY.

[F.R. Doc. 61-8437; Filed, Sept. 1, 1961; 8:50 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

AUGUST 30, 1961.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 37331: Pig Iron to New Jersey and Pennsylvania Points. Filed by Traffic Executive Association-Eastern Railroads, Agent (E.R. No. 2585), for interested rail carriers. Rates on pig iron, in carloads, from Buffalo, N.Y.,

Cleveland and Jackson, Ohio, Erie, Neville Island, Pa., and points grouped therewith, and Sharpsville, Pa., and points grouped therewith, to specified points in New Jersey and Pennsylvania. Grounds for relief: Market competition.

Tariffs: Supplement 164 to Traffic Executive Association-Eastern Railroads tariff I.C.C. 4350, supplement 36 to Pennsylvania Railroad tariff I.C.C. 3549, and supplement 3 to Pittsburgh & Lake Erie Railroad tariff I.C.C. 3647.

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 61-8438; Filed, Sept. 1, 1961; 8:50 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulations on employment of learners (29 CFR Part 522), and Administrative Order No. 524 (24 F.R. 9274) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below. Conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of ten percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Bannon Mills Inc., 7th and Union Streets, Lebanon, Pa.; effective 8-22-61 to 8-21-62. Learners may not be employed at special minimum wage rates in the production of separate skirts (children's pants, jackets, and shirts).

Belle Manufacturing Co., Inc., 425 Pleasant Street, Fall River, Mass.; effective 8-18-61 to 8-17-62 (women's cotton dresses).

Carbon Hill Manufacturing Corp., Carbon Hill, Ala.; effective 8-18-61 to 8-17-62 (men's and boys' dress slacks).

Delmeade Slacks, Inc., Catlin Street, Okolona, Miss.; effective 8-18-61 to 8-17-62 (ladies' dress slacks).

Dickson-Jenkins Manufacturing Co., 202-208 St. Louis, Fort Worth, Tex.; effective 8-21-61 to 8-20-62 (work clothing; western pants; shirts; jackets; men's and boys' casuals).

Elder Manufacturing Co., Dexter, Mo.; effective 8-16-61 to 8-15-62 (men's and boys' shirts; boys' slacks).

Elder Manufacturing Co., Ste. Genevieve, Mo.; effective 8-16-61 to 8-15-62 (boys' shirts and jackets).

Fleetline Industries, Inc., Garland, N.C.; effective 8-23-61 to 8-22-62 (men's sport shirts).

Mode O'Day Corp., 607 Main, Osawatimie, Kans.; effective 8-27-61 to 8-26-62 (women's blouses).

Plains Manufacturing Co., Inc., 61 Hudson Rd., Plains, Pa.; effective 8-16-61 to 8-15-62 (brassieres).

Roswell Co., Roswell, Ga.; effective 8-22-61 to 8-21-62 (men's work pants).

Salem Garment Co., Inc., Salem, S.C.; effective 8-22-61 to 8-21-62 (women's wash dresses).

Sparta Garment Co., Inc., Sparta, Ga.; effective 8-25-61 to 8-24-62 (men's and boys' pants).

Wrenn Manufacturing Co., Thomasville, N.C.; effective 8-14-61 to 8-13-62. Learners may not be employed at special minimum rates for separate skirts (ladies' and men's sportswear).

Wright Manufacturing Co., 626 West Currahee Street, Toccoa, Ga.; effective 8-20-61 to 8-19-62 (boys' and men's casual pants).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Buckeye Overall Co., Versailles, Ohio; effective 8-18-61 to 8-17-62; 10 learners (men's and boys' dungarees).

Covington Manufacturing Co., 1019 Washington Street, Covington, Ind.; effective 8-15-61 to 8-14-62; 10 learners (men's sport jackets and car coats; men's and boys' goal coats).

Dunmore Sewing Co., 105 Corner Street, Dunmore, Pa.; effective 8-17-61 to 8-16-62; 5 learners (children's dresses).

Hampton Industries, Inc., Hampton, Ark.; effective 8-18-61 to 8-17-62; 6 learners (men's outerwear jackets).

M. & H. Manufacturing, Inc., Syracuse, Nebr.; effective 8-17-61 to 8-16-62; 5 learners (infants', toddlers' and boys' shirts).

Oregon Manufacturing Co., 126 North 3d Street, Oregon, Ill.; effective 8-30-61 to 8-29-62; 10 learners (infants' and children's knit cotton polo shirts).

Panola Incorporated of Batesville, Linker Street, Batesville, Miss.; effective 8-16-61 to 8-15-62; 10 learners (women's girdles).

Texas Dress Corp., 101 Sanders Street, Bowie, Tex.; effective 8-18-61 to 8-17-62; 10 learners (ladies' dresses and blouses).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Ball Bra Manufacturing Co., Inc., 2445 Bedford Street, Johnstown, Pa.; effective 8-17-61 to 2-16-62; 40 learners (brassieres).

Bishopville Manufacturing Co., Gregg Street, Bishopville, S.C.; effective 8-16-61 to 2-15-62; 30 learners (women's cotton dresses).

Cambria Dress Manufacturing Co., Walter and Johnson Streets, Nanty Glo, Pa.; effective 8-15-61 to 2-14-62; 10 learners (women's dresses).

Kreditor Manufacturing Co., Inc., Hubbard, Tex.; effective 8-18-61 to 2-17-62; 15 learners (ladies' dresses).

Lock Haven Garment Co., 921 Third Street, Lock Haven, Pa.; effective 8-18-61 to 2-19-62; 30 learners (ladies' blouses).

The Roswell Co., Alpharetta Plant, Alpharetta, Ga.; effective 8-22-61 to 2-21-62; 20 learners (men's work pants).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.44, as amended).

DeKalb Hosiery Mills, Inc., Fort Payne, Ala.; effective 8-14-61 to 8-13-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Dumas Hosiery Mills, Dumas, Arkansas; effective 8-15-61 to 8-14-62; 4 learners for normal labor turnover purposes (full-fashioned).

Excel Hosiery Mills, Inc., 203-205 Hart Street, Union, S.C.; effective 8-18-61 to 8-17-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Fort Payne Hosiery Mills, Inc., 800 North Gault Avenue, Fort Payne Alabama; effective 8-24-61 to 8-23-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

V. I. Prewett & Son, 109 2d Street NE., Fort Payne, Ala.; effective 8-21-61 to 8-20-62; 5 learners for normal labor turnover purposes (seamless).

Southland Sox, Inc., Fort Payne, Ala.; effective 8-18-61 to 8-17-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Wilma Hosiery Mill, Inc., Spruce Pine, N.C.; effective 8-16-61 to 8-15-62; 5 learners for normal labor turnover purposes (seamless).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.30 to 522.35, as amended).

Coopers Incorporated of Miss., 108 Church Street, Belzoni, Miss.; effective 8-21-61 to 2-20-62; 40 learners for plant expansion purposes (men's knitted underwear).

Junior Form Lingerie Corp., Cairnbrook, Pa.; effective 9-1-61 to 8-31-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (women's slips, petticoats, and gowns).

Junior Form Lingerie Corp., Jerome, Pa.; effective 8-19-61 to 8-18-62; 5 learners for normal labor turnover purposes (women's sleepwear).

Snowdon, Inc., Osceola, Iowa; effective 8-26-61 to 2-25-62; 5 learners for plant expansion purposes (women's lingerie).

Snowdon, Inc., Osceola, Iowa; effective 8-26-61 to 8-25-62; 5 percent of the total number of factory production workers for normal labor turnover purposes (women's lingerie).

Van Raalte Co., Inc., 416 Main Street, Dunkirk, N.Y.; effective 8-21-61 to 2-20-62; 40 learners engaged in the production of knitted wear for plant expansion purposes (women's and misses' underwear and night-wear).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.11, as amended).

The following learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated.

Alicia Embroidery, Km. 5.1 Trujillo Alto Road, Trujillo Alto, P.R.; effective 8-1-61 to 1-31-62; 20 learners for plant expansion purposes, in the occupations of: (1) sewing machine operating for a learning period of 480 hours at the rates of 60 cents an hour for the first 240 hours and 70 cents an hour for the remaining 240 hours; (2) hand cutting of applique on embroidery panels for a learning period of 240 hours at the rates of 60 cents an hour for the first 160 hours and 70 cents an hour for the remaining 80 hours (ladies' lingerie).

Edro Corp., Anasco, P.R.; effective 8-2-61 to 2-1-62; 15 learners for plant expansion purposes, in the occupation of sewing machine operating for a learning period of 480 hours at the rates of 62 cents an hour for the first 240 hours and 72 cents an hour for the remaining 240 hours (fabric gloves).

Lady Lillian, Inc., Maunabo, P.R.; effective 8-1-61 to 7-31-62; 10 learners for normal labor turnover purposes, in the occupation of sewing machine operating for a learning period of 480 hours at the rates of 60 cents an hour for the first 240 hours and 70 cents an hour for the remaining 240 hours (ladies' underwear).

Plata Glove, Inc., Cayey, P.R.; effective 8-9-61 to 2-8-62; 48 learners for plant expansion purposes, in the occupations of: (1) sewing machine operating for a learning period of 480 hours at the rates of 62 cents an hour for the first 240 hours and 72 cents an hour for the remaining 240 hours; (2) die and clicker machine operating for a learning period of 160 hours at the rate of 62 cents an hour (leather gloves).

Plata Glove, Inc., Cayey, P.R.; effective 8-9-61 to 8-8-62; 17 learners for normal labor turnover purposes, in the occupations of: (1) sewing machine operating for a learning period of 480 hours at the rates of 62 cents an hour for the first 240 hours and 72 cents an hour for the remaining 240 hours; (2) die and clicker machine operating for a learning period of 160 hours at the rate of 62 cents an hour (leather gloves).

Rafali Corp., 502 Road No. 2, Mayaguez, P.R.; effective 7-24-61 to 1-23-62; 30 learners for plant expansion purposes, in the occupations of: (1) machine embroidery operating for a learning period of 480 hours at the rates of 60 cents an hour for the first 240 hours and 70 cents an hour for the remaining 240 hours; (2) hand cutting of applique for a learning period of 240 hours at the rates of 60 cents an hour for the first 160 hours and 70 cents an hour for the remaining 80 hours (embroidery on lingerie).

Tempo Glove Corp., Salinas, P.R.; effective 8-14-61 to 8-13-62; 10 learners for normal labor turnover purposes; in the occupation of sewing machine operating for a learning period of 480 hours at the rates of 62 cents an hour for the first 240 hours and 72 cents an hour for the second 240 hours (leather gloves).

Each learner certificate has been issued upon the representations of the employers which, among other things, were that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9.

Signed at Washington, D.C., this 24th day of August 1961.

ROBERT G. GRONWALD,
Authorized Representative
of the Administrator.

[F.R. Doc. 61-8422; Filed, Sept. 1, 1961; 8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—SEPTEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during September.

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Now Available

CFR SUPPLEMENTS

(As of January 1, 1961)

The following book is now available:

Titles 1-4 (Revised) \$4.00

Previously announced:

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Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

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

Revision

Part 779 of Title 29 of the Code of Federal Regulations is hereby revised in the manner indicated below in order to adapt it to the Fair Labor Standards Amendments of 1961 (Public Law 87-30). As this revision is concerned solely with interpretative rules, neither public procedure nor delay in the effective date is required by the Administrative Procedure Act, and it will become effective September 3, 1961, the effective date of the 1961 amendments.

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AUTHORITY: §§ 779.0 to 779.515 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 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. 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 the bulletin 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, as amended, is a Federal statute of general application which establishes minimum wage, overtime 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 29 CFR Part 516. 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 "Old" and "new" coverage.

Under the Act as amended in 1961, an employer may have some employees subject to its minimum wage, overtime pay, or child labor provisions who would be covered by such provisions under the "old" 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 1961 amendments. As explained in Subparts B and C such provisions of the Act, as amended, 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. However, the minimum wage rates and overtime pay provisions will not be uniform for all such employees until September 3, 1965. On and after that date, every such employee subject to the minimum wage provisions will be entitled to not less than \$1.25 an hour and every such employee subject to the overtime provisions will be 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. In contrast, during the period beginning with the effective date of the 1961 amendments on September 3, 1961 and ending September 2, 1965, the minimum wage rates and the overtime pay provisions, applicable to employees who are not specifically exempt therefrom, will be different for employees in employments brought under the Act for the first time by the amendments than for employees whose coverage is based on the "old" provisions of the Act. During this period employees whose coverage depends on the "new" provisions may be paid a lower minimum wage rate than those covered under the "old" provisions and may be employed for a longer workweek without overtime pay, as specified in the Act. Accordingly, employers who do not wish to pay to all covered employees the minimum wages and overtime pay required for employees covered under the "old" provisions will need to identify those employees who are covered under the "old" 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 "old" coverage of the Act.

The 1961 amendments did not change the tests (described in subpart B) by which coverage based on the employee's individual activities is determined. Any employee whose employment satisfies these tests and would not have come within some exemption in the Act prior to the 1961 amendments is subject to the "old" provisions of the law and entitled to a minimum wage of at least \$1.15 an hour beginning September 3, 1961 and not less than \$1.25 an hour beginning September 3, 1963, unless expressly exempted by some provision of the amended Act. 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 and Public Contracts Divisions.)

§ 779.4 Pay standards for "newly covered" employees.

There are many employees of retailers as well as other employees whose individual activities would not bring them within the minimum wage or overtime pay provisions of the Act as it was prior to the 1961 amendments, but who are brought within minimum wage or overtime coverage or both for the first time by the new "enterprise" coverage pro-

visions or changes in exemptions, or both, which were enacted as part of the amendments and made effective September 3, 1961. These "newly covered" employees, unless a specific exemption has been retained or provided for them in the amendments, 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:

Beginning—	Minimum wage	Overtime pay
Sept. 3, 1961-----	\$1 an hour-----	None required.
Sept. 3, 1963-----	No change-----	After 44 hours in a workweek.
Sept. 3, 1964-----	\$1.15 an hour-----	After 42 hours in a workweek.
Sept. 3, 1965 ¹ and thereafter.	\$1.25 an hour ¹ -----	After 40 hours in a workweek. ¹

¹ Requirements identical to those for employees under "old" coverage. (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 and Public Contracts Divisions.)

§ 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 777 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; Part 791 of this chapter, discussing joint employment relationships; and Part 776 of this chapter, discussing the general coverage provisions of the Act.

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 re-examination 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 sanc-

tion 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 and Public Contracts Divisions, United States Department of Labor, Washington 25, D.C., or to any Regional Office of the Divisions.

SOME BASIC DEFINITIONS

§ 779.11 General statement.

The meaning and application of the provisions of law discussed in this part depends 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.

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, "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." 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.)

§ 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 section 3(s) (1) of the Act, 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.

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." As explained in the interpretative bulletin on method of payment of wages, Part 777 of this chapter, it is the above provision of the Act which governs the payment, otherwise than in cash, of wages which the Act requires. Regulations under which the reasonable cost or fair value of such facilities furnished may be computed for inclusion as part of the wages required by the Act are 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(d)

of the Act defines "regular rate" in the following language:

(d) 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 eight 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 over-

time exemption of certain commission employees of retail or service establishments which is contained in section 7(h) 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, 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" and "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 joint employment, 29 CFR Part 791, 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.

It is provided in section 3(r) of the Act that "enterprise" as used in the Act, "means the related activities performed (either through unified operation or common control) by any person or persons 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 definition is discussed in Subpart C of this part.

§ 779.22 Enterprise engaged in commerce or in the production of goods for commerce.

The portions of the definition of "enterprise engaged in commerce or in the production of goods for commerce" (Act, section 3(s)) which are important to a determination of the application of provisions of the Act to employees employed by retailers are as follows:

(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 \$1,000,000, 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.

The application of this definition is fully considered in Subpart C of this part.

§ 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(b), 7(h), 13(a), 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 amendments to the Act, which use the same term in a number of the new 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, 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—Employments 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, overtime and child labor provisions of the Act have applied since 1938, and continue to apply, to employees who individually are engaged in interstate or foreign commerce or in the production of goods for such commerce as these terms are defined in the Act. Beginning September 3, 1961, these provisions will extend to additional employees because of their employment in certain enterprises. These enterprises are described in section 3(s) as enterprises engaged in commerce or in the production of goods for commerce and further described in section 3(s) (1) through (5). A detailed discussion of the coverage of employees in those enterprises 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 interstate or foreign commerce or in the production of goods for such commerce, or because of their employment in an "enterprise engaged in commerce or in the production of goods for commerce" as described in section 3(s) 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 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 is 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 "implicit 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. Waiialua*, 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.) As a result of the 1961 amendments the exemptions for retail or service establishments have been narrowed and a discussion of these coverage provisions of the Act becomes pertinent. This subpart, therefore, will discuss briefly the principles of coverage of such employees 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 terms "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 § 776.20 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 picture, newspaper and radio copy; art work and manuscripts for publication; sample books, letterheads, envelopes, shipping tags, labels, check books, blank books, 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.

§ 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 §§ 779.103-779.109 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 in enterprises of the type described in section 3(s) (1) and 3(s) (5) 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 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 shipment, is performing covered activities.

§ 779.118 Employees providing central services for multi-unit organizations.

Employees providing central services for a multi-unit 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. Shinn & 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 con-

sulted. 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—Employments to Which the Act May Apply; Enterprise Coverage

ENTERPRISE; THE ACT'S NEW BUSINESS UNIT

§ 779.200 Coverage expanded by 1961 amendments.

The 1961 amendments for the first time since the enactment of the Fair Labor Standards Act of 1938 provide that all employees in a particular business unit are covered by the Act. Prior to the amendment each employee's coverage depended on whether that employee's activities were in commerce or constituted the production of goods for commerce. Now all employees employed in an "enterprise" described in section 3(s) (1) through (5) of the Act are 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 (see § 779.21) and, wherever used in the Act, is governed by this definition. The term is a key in determining the applicability of the Act to these businesses. The "enterprise" is the unit for determining whether the requisite dollar tests and other conditions of section 3(s) (1) through (5) are met, and the unit for determining which employees are entitled to the minimum wage and overtime 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 five categories described in section 3(s) (1) through (5), 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.

(a) *General.* 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 which are not related are not included in the enterprise.

(b) *Activities which are included.* Further, 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. It specifically includes, as a part of the enterprise, departments of an establishment operated through leasing arrangements.

(c) *Activities which are excluded.* The definition excludes from the "enterprise" activities performed "for" the enterprise 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".

(a) The coverage, exemption and other provisions of the Act depend, in part, on the scope of the terms "employer," "establishment," or "enterprise." 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.)

(b) The term "enterprise" has not previously been used in the Act, but the careful definition and the legislative history of the 1961 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, however, is not necessarily co-extensive with the entire business activities of an employer.

(c) 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 § 779.104(b)). On the other hand, a single employer may operate more than one enterprise (see § 779.104(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 single business unit, owned and operated by one person—the "enterprise" is readily identifiable. The entire business ordinarily is one enterprise. In many cases the entire business activity of the single owner-employer is performed in one establishment. An example is 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 multi-unit business.* The enterprise also is readily identifiable in many cases where one company conducts its single business in a number of establishments. An example of such an enterprise is the typical chain of retail stores. 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. In such circumstances, 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 business 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 the enterprise and whether they are performed through "unified operation" or "common control," or whether, on the other hand, they are performed for a separate and distinct business. 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. Rep. 145, 87th Cong., 1st Sess., p. 41.) Sections 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"; 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 "for" the enterprise 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.

(b) Generally, the answer to the question whether particular activities are "related" or not, will depend in each case upon whether the activities serve the business purpose of the enterprise, or whether they serve a separate and unrelated business. 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 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 and the construction employees who are employed by the retail enterprise will be covered if the retail enterprise is covered. 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." For example, 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 same premises or at separate locations, the 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 the Senate Report 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 under section 13(a)(20) of the Act if the specific conditions are met; see §§ 779.389-779.394); (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 such activities as manufacturing, warehousing, wholesaling and retailing of a particular product or products are "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. 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, and not to supply the retail business with merchandise, they are separate businesses even if they are under common ownership. Where the manufacturing operations are performed in substantial part for the purpose of distributing the goods through the retail stores, 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 or whether they, in fact, constitute a single integrated business. 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 owner may engage in them primarily for the additional revenue. In the latter cases, the foreign activities may be conducted in a more elaborate manner, as where the enterprise operates a bus stop or a post office substation. 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, with separate employees and separate records, they may constitute a separate enterprise. Where, however, such activities are intermingled with the other activities of the enterprise, 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 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. Activities which are not "related" will be treated separately for purposes of the tests contained in section 3(s) (1) through (5) of the Act. For example, in the case where a single company operates retail grocery stores and also engages in an unrelated business of manufacturing clothing, the "enterprise" for purposes of section 3(s) (1) of the Act will consist of the retail grocery stores and any activities related to them. The clothing manufacturing will not be included in determining whether the retail business enterprise has one million dollars in sales and meets the other conditions of section 3(s) (1), and the factory employees will not be covered merely because the retail business is covered. The manufacturing business will be considered separately under section 3(s) (3).

COMMON BUSINESS PURPOSE

§ 779.212 Enterprise must consist of related activities performed for a "common business purpose".

Related activities described in section 3(r) are included in the same enterprise only when they are performed for a "common business purpose". 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". An example was also cited where retailing and construction were performed for a common business purpose. On the other hand, it is clear that even a single individual or corporation may perform activities for different business purposes. Thus the report 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.R. Rep. 75, 87th Cong., 1st Sess., p. 7.)

§ 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.

§ 779.214 Common "business" purpose.

(a) The activities described in section 3(r) are included in an enterprise only when they are performed for a "business" purpose. If activities are not performed for a "business" purpose, they are not part of an enterprise. Thus, activities of eleemosynary, religious, or educational organizations which are not performed for profit will not be regarded as performed for a "common business purpose". The key word in this term is the word "business". Nonprofit activities of organizations of the type referred to are not performed for a "business" purpose. Such activities therefore will not be considered as a part of any enterprise under the Act. (S. Rep. No. 145, 87th Cong., 1st Sess., p. 41.)

(b) It should be noted, however, that other activities of such organizations 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.

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."

§ 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 amendments, to cover, among others, the large 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." Where the Congress intended to exclude certain arrangements or activities from the "enterprise" it did so by specific provision.

§ 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 directed to accomplish 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 in business 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.

§ 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. In fact, the term "unified operation" has reference particularly to enterprises composed of a number of separate companies. 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.

§ 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. The word "control" thus includes the power or authority to control. In relation to the performance of the described activities, the word "control", under the definition in section 3(r), includes the power to direct, restrict, regulate, govern, or administer, the performance of the activities. "Common" control means 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."

§ 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 performances. 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 semi-autonomous basis, superficially free of actual control, so long as the power to exercise control exists through such ownership. 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, partnership, corporation, or other single business organization. Ownership sufficient to exercise "control" exists also where there is 51 percent ownership of voting stock. 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. In such cases, 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.

VARIOUS 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."

(b) In the ordinary case, the establishment may control many of the operations of the leased department and unify its operation with its own. Thus, they may operate under a common trade name; the 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 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 rather than a "leased department" 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 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 relationship of the parties may be only that of landlord and tenant. In such a case, the lessee's operations will not be regarded as a "leased department" and will not be included in the same enterprise with the lessor.

§ 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 a large 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 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":

(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. Rep. 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 location; and (8) hospitalization and life insurance protection. (S. Rep. 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. Rep. 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. 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. 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 employees of a retail or service establishment primarily engaged in selling automobiles or trucks are specifically exempt from the pay provisions under section 13(a)(19) of the Act. 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) An illustration of such an arrangement is the case of *Gulf Refining Company v. Fox, D.C., W. Va., 11 F. Supp. 425*. In this case Gulf granted the dealer a nonexclusive, revocable and nonassignable license to sell Gulf's products. While the license was granted for a fixed period, Gulf reserved the right to revoke it on 24-hours notice; and if revoked, no liability for damages would have attached to Gulf by reason of the termination. Certain equipment, including tanks, pumps and fixtures were loaned to the dealer by Gulf. While the dealer was permitted to sell other merchandise, he was restricted to the extent that he could not purvey products of any competitor of Gulf. The dealer agreed to purchase Gulf's products at Gulf's posted service station prices on the day of delivery less \$0.02½ a gallon for gasoline and a discount for oils and greases of 40%. The dealer sold to its customers at the prices posted by Gulf. If a dealer did not conform to the posted prices, Gulf attempted to bring him into line by negotiation; if compliance could not be effected, Gulf, of course, was free to terminate the license. Ordinarily the premises were owned or leased by the dealer, but Gulf had the option of purchasing the premises at any time prior to the expiration of the license. Gulf's salesmen and truck drivers were trained to observe the operations of the dealers and were authorized to suggest to a dealer changes in practices to conform with those which Gulf considered proper. This case arose under the West Virginia tax law which was applicable to chain store organizations. Gulf urged that in this case the dealer was not part of a chain store system because he purchased his own products; became the owner of them; resold them with other merchandise in the ordinary course of business; extended credit if he saw fit, and sustained the losses from such extensions of credit; received the gains or sustained the losses from price fluctuations of stock on hand; employed and discharged his own employees and maintained his own books and records without interfer-

ence from Gulf, and, in general, conducted the business of his station as he saw fit. The Court rejected Gulf's contentions and held as follows:

It may be conceded that it (Gulf) does not exercise full control over all of the actions of the dealers in a strict legal sense, but its actual control is so effective that little room is left for independent action on their part, while full enjoyment of the advantages inherent in a chain store system on its part is ensured. Adequate control over the operating methods of the dealers and of the retail prices of the goods is secured by the right retained by the company to cancel the license agreement and to put an end to the business relations between the parties; and at the same time to retain possession of the dealer's premises under the lease * * *. The method of storage and sale of the merchandise is largely determined by the kind of equipment which is furnished by the company to all dealers alike; and variations in local methods of conducting the business are constantly subject to the supervision and suggestions of the agents of the company . . . (the goods) sold at the stations at substantially the same prices and in substantially the same way as if the stations were actually owned by the company * * *.

Gulf also argued that the term "controlled" in the taxing statute had to be construed most strongly against the Government, and should not be extended by implication and, therefore, the term should be held to refer only to legally enforceable control and should not be extended to encompass a situation where there was only the ability to influence the dealer through the power to terminate his contract. The Court held that the purpose of the taxing statute was to cover all chain store organizations; that it was not confined to stores under common ownership, but applied to all stores owned, operated, maintained, or "controlled" by the same person; and the Court concluded that "It is reasonable to say that the Gulf Company, within the meaning of the tax statute, operates as well as controls the stations as part of an integrated chain store organization."

(c) The factors which the West Virginia Court considered significant in concluding that the requisite "control" existed under this taxing statute, are also applicable under a remedial statute such as the Fair Labor Standards Act in determining whether a franchise or other arrangement brings the dealer to whom the franchise is granted into a larger enterprise.

§ 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."

(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. Rep. 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 employees are the owner, his spouse, parents, or children.

Section 3(s) contains a provision that any establishment, "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," shall not be considered an "enterprise" as defined in section 3(r) or as a part of any other enterprise. Further, the sales of such an establishment are not included in determining the annual gross volume of sales of any enterprise for the purpose of section 3(s) of the Act.

§ 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.

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 779.237-779.256 will discuss the criteria for determining what constitutes a "covered enterprise" under the Act and the conditions for coverage of those enterprises of interest to retailers.

§ 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 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 * * *

In order for an enterprise to come within the coverage of the Act it must, therefore, be established that the enterprise has at least two or more employees engaged in the described activities. The activities specified in section 3(s) are the following:

(a) Activities where employees are engaged in commerce or in the production of goods for commerce, including

(b) Activities in which employees are engaged in handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person.

§ 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 two or more employees engaged in certain described activities. As in the case of the other conditions for coverage set forth in section 3(s), this requirement, too, will be determined on an annual basis in order to give full effect to the intent of Congress. Thus, an enterprise will be considered to have at least two or more 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 section 3(s) (1) through (5), it regularly and recurrently has at least two or more employees engaged in such activities. On the other hand, it is plain that an enterprise that has two or more 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 the General Coverage of the Wage and Hour Provisions (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 "en-

gaged 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". The term "goods" is defined in section 3(i) of the Act and the definition is explained in § 779.107. 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. However, the mere fact that employees, in conducting the business of the enterprise or establishment, are using machinery, equipment, work tools, and the like, which may have been moved in or produced for commerce, does not mean that they are handling, selling, or otherwise working on "goods" that have been moved in or produced for commerce within the meaning of section 3(s).

(b) *Handling * * * or otherwise working on goods.* The term "handling * * * or in any other manner working on * * * goods" has been contained in the definition of the term "produced" in section 3(j) of the Act since 1938, and already has a well defined meaning within the context of the existing law (see § 776.16 of Part 776 of this chapter, the interpretative bulletin on the general coverage of the Act). The term "handling * * * or otherwise working on goods" used in section 3(s) is substantially the same as the term used in section 3(j) of the Act. Both terms will therefore be considered to have essentially the same meaning. Thus, the activities encompassed in the term "handling or in any other manner working on goods" in section 3(s) is the same as the activities encompassed in the similar term in section 3(j). 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".

§ 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). 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".

THE 3(s) (1) ENTERPRISE

§ 779.244 "Covered enterprises" of interest to retail or service industry.

The various enterprises which are covered by the Act are described in section 3(s) (1) through (5). The retail or service industry, however, is primarily concerned with section 3(s) (1) and 3(s) (5). Thus, only the section 3(s) (1) enterprise and the 3(s) (5) enterprise will be considered in this bulletin. The enterprises described in section 3(s) (2), (3), and (4) will each be discussed in separate bulletins. The statutory definitions of the 3(s) (1) and 3(s) (5) enterprises are quoted in § 779.22.

§ 779.245 First condition for coverage of 3(s) (1) enterprise; engaging in commerce or in the production of goods for commerce.

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.

§ 779.246 Second condition of a 3(s) (1) enterprise; having one or more retail or service establishments.

To come within the scope of section 3(s) (1) the "enterprise", in addition to the other conditions, must have one or more "retail or service establishments." The statutory definition of the term "retail or service establishment" is contained in § 779.24 and is discussed in Subpart D of this part. Whether composed of one or more establishments, an enterprise will come within the scope of section 3(s) (1) if it has at least one "retail or service establishment" and if the enterprise meets all the other conditions of that section.

§ 779.247 Third condition of a 3(s) (1) enterprise; having \$1,000,000 or more in annual gross volume of sales.

To come within the scope of section 3(s) (1), the "enterprise", in addition to the other conditions, must have an annual gross volume of sales of not less than \$1,000,000 exclusive of excise taxes at the retail level which are separately stated. If the annual gross volume of sales of the enterprise is less than the stated amount it will not come within the scope of section 3(s) (1).

§ 779.248 What sales are included in annual gross volume.

The annual gross volume of sales of an enterprise consists of its gross receipts from all types of sales during a 12-month period. The gross volume of sales means the gross volume derived from all sales transactions including, for example, income 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. The gross volume of sales includes the re-

ceipts from sales made by the retail or service establishments of the enterprise as well as the sales made by any other establishments of the enterprise. The dollar volume of sales of the entire business in all establishments is added together to determine whether the million 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 sales 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 of that establishment from the annual gross volume of sales of the enterprise. Where merchandise is taken in trade when a sale is made, the annual gross volume of sales will include the gross amount of the sale before deduction of the allowance on such trade-in merchandise. When the trade-in merchandise is in turn sold by the enterprise, the amount of that sale will be included in its annual gross volume of sales. The computation of the annual gross volume of sales 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 §§ 779.263-779.266. The methods of calculating the annual gross volume of sales of an enterprise are set forth in §§ 779.267-779.273.

§ 779.249 Fourth condition of a 3(s) (1) enterprise; inflow test.

To come within the scope of section 3(s) (1) 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 (§ 779.251) and (b) that such goods move or have moved across State lines (§ 779.252); and (c) that such purchases and receipts amount in total annual volume to \$250,000 or more (§ 779.256).

§ 779.250 "Goods" defined.

The term "goods" is defined in section 3(i) of the Act. The statutory definition is quoted in § 779.14.

§ 779.251 Purchase or receive "goods for resale".

(a) Goods will be considered purchased or received "for resale" 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.

§ 779.252 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 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.

§ 779.253 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.

§ 779.254 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.

§ 779.255 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.

§ 779.256 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 § 779.267.

THE GASOLINE SERVICE ESTABLISHMENT

3 (S) (5) ENTERPRISE

§ 779.257 Gasoline service establishments as an "enterprise engaged in commerce."

(a) *Statutory provisions.* Section 3 of the Act contains the following special provisions with respect to gasoline service establishments:

(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:

(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:

In addition, section 13(b) (8) of the Act provides a specific exemption from the overtime pay provisions of section 7 of the Act for "any employee of a gasoline service station."

(b) *Meaning of "gasoline service establishment."* The Senate Report states as follows: Although the term "gasoline service establishment" is used in section 3(s) (5), and the term "gasoline service station" in section 13(b) (8), no difference in application is intended (see S. Rep. 145, 87th Cong., 1st Sess., p. 32). A gasoline service station or establishment is one which is typically a physically separate place of business engaged primarily 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. Rep. 145, 87th Cong., 1st Sess. p. 32.)

(c) *Scope of exemption.* The 1961 amendments bring under the minimum wage and child labor provisions, but not the overtime provisions, of the Act any gasoline service station or establishment which has an annual gross volume of sales of not less than \$250,000 exclusive of certain excise taxes. A gasoline service station whose annual gross volume of sales is less than \$250,000 (exclusive of the described excise taxes) will continue to be exempt from the minimum wage and overtime provisions if it meets

all the requirements for exemption in section 13(a) (2), which defines and exempts certain retail or service establishments. The 13(a) (2) exemption will be applicable to the station even if it is part of an enterprise described in section 3 (s) (1) which has more than \$1,000,000 in annual gross volume of sales including the sales of the gasoline service establishment. The requirements of section 13(a) (2) are described in §§ 779.336 through 779.340.

§ 779.258 Conditions to be met by a 3(s) (5) enterprise.

Section 3(s) (5) of the Act sets forth the following conditions that must be met for a gasoline service establishment to be an "enterprise engaged in commerce or in the production of goods for commerce":

(a) It must have 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

(b) It must have an annual gross volume of sales of not less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated).

§ 779.259 A gasoline service establishment.

Under section 3(s) (5) the 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 §§ 779.302-779.306. While receipts from incidental sales and services are included and counted in determining the establishment's annual gross volume of sales for purposes of section 3(s) (5), the establishment's primary source of receipts must be from the sale of gasoline and lubricating oils. (See Senate Report cited in § 779.257.) 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" within the meaning of section 3(s) (5). 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 of section 3(s) (5).

§ 779.260 First condition for coverage of 3(s) (5) enterprise; engaged in commerce or in the production of goods for commerce.

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 employees 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.

§ 779.261 Second condition for coverage of 3(s)(5) enterprise; \$250,000 test.

(a) A gasoline service establishment will come within the scope of section 3(s)(5) of the Act only if its annual gross volume of sales is not less than \$250,000, exclusive of excise taxes at the retail level which are separately stated. A gasoline service establishment which does not have such an annual gross volume of sales is not a 3(s)(5) enterprise. 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. A further discussion of what sales are included in the annual gross volume is contained in § 779.248 of this Interpretative Bulletin.

(b) 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 §§ 779.263-779.266. 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 §§ 779.267-779.273.

§ 779.262 Exemption from overtime under section 13(b)(8).

Section 13(b)(8) of the Act exempts from the overtime requirements only, "any employee of a gasoline service station." This exemption will be applicable without regard to the annual gross volume of sales of the gasoline service station by which the employee is employed. To be exempt under section 13(b)(8) an

employee must be an "employee of" a gasoline service station. As noted in § 779.257, the term "gasoline service station" as used in section 13(b)(8) and the term "gasoline service establishment" as used in section 3(s)(5) refer to the same type of establishment. Therefore the exemption under section 13(b)(8) will be applicable to any employee who is employed by an establishment which is commonly known as a "gasoline service station." The scope and meaning of this term are discussed in § 779.259. If the employee is employed by such an establishment he will be regarded as an "employee of" that establishment and will be exempt from the overtime requirements of the Act under section 13(b)(8) in any workweek in which he is so employed. A discussion of which employees are considered to be an "employee of" an establishment is contained in § 779.307.

EXCISE TAXES

§ 779.263 Statutory provision.

Sections 3(s)(1), 3(s)(2), 3(s)(5) and 13(a)(2)(iv) provide for the exclusion of "excise taxes at the retail level which are separately stated" in computing the gross annual volume of sales or the annual dollar volume of sales for purposes 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., 1st Sess., p. 39.)

In applying the above rules to determine annual gross volume of sales under section 3(s) or annual dollar volume of sales under section 13(a)(2)(iv), 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."

§ 779.264 Excise taxes at the retail level.

Federal excise taxes are imposed at the retail level on a wide variety of items

set forth at 26 U.S.C. 4001-56. Included in this category are excise taxes, generally at 10 percent of the price at which they are sold, on various types of jewelry and related items, furs, toilet preparations and luggage. Excise taxes are also 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 liquified 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 separately 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. Similarly, some State taxes on gasoline are levied at the retail level.

§ 779.265 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 these taxes must be carefully considered. In some cases these 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.

§ 779.266 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.

COMPUTING THE ANNUAL VOLUME

§ 779.267 Basis for making computations.

The annual gross dollar volume of sales of an enterprise which has one or more retail or service establishments, or of any such establishment, or of any gasoline service establishment which is an enterprise under section 3(s)(5), consists of its gross dollar volume of all sales during a 12-month period. Where a computation of annual gross volume of sales is necessary to determine monetary obligations to employees under the Act, 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.

§ 779.268 Methods of computing annual volume of sales.

(a) 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 in excess of the amount specified in the statute, it is plain that its annual gross volume of sales currently is in excess of the statutory amount; or

(b) Where the enterprise or establishment has not yet in such current year exceeded the statutory amount in its gross volume of sales, but has had, in the most recently ended year used by it for income tax purposes, a gross volume of sales in excess of the amount specified in the Act, the enterprise or establishment will be deemed to have an annual gross volume of sales in excess of such statutory amount, unless use of the method set forth in paragraph (c) of this section establishes a gross annual volume less than the statutory amount; or

(c) An enterprise or establishment may use the following method of calculating its annual gross volume of sales: At the beginning of each calendar quarter (Jan. 1-Mar. 31; Apr. 1-June 30; July 1-Sept. 30; Oct. 1-Dec. 31), the gross receipts from all of its sales during the annual period (12 calendar months) which immediately precedes the current calendar quarter, is totaled. In this manner the employer, by calculating the sales of his enterprise or establishment, 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 calendar quarter.

§ 779.269 Computations on a fiscal year basis.

Some enterprises and establishments operate on a fiscal year, consisting of an annual period different from the calendar year, for income tax or sales or other accounting purposes. Such enterprises and establishments, in applying the method of computation in § 779.268, may use the four quarters of the fiscal period instead of the four quarters of the calendar year. Once adopted, the same basis must be used in subsequent calculations.

§ 779.270 Grace period of one month for computation.

Where it is not practicable to compute the annual gross volume of sales under § 779.268 or § 779.269 in time to determine obligations under the Act for the current quarter, an enterprise or establishment may use a one-month grace period. If this one-month grace period is used, the computations made under those sections will determine its obligations under the Act for the 3-month period commencing one 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.

§ 779.271 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 methods described in §§ 779.267 to 779.270.

§ 779.272 Calculating annual purchases or receipts under 3(s) and annual sales for exemptions.

The methods of calculation described above, in §§ 779.268 to 779.271, may be used for determining the annual amount of purchases or receipts of goods for resale that move or have moved across State lines, and also, as in the past, may be used for determining the annual dollar volume of sales of goods or services, or of both, for purposes of applying the percentage requirements of section 13 (a) (2) and 13(a) (4), and in determining the applicability of other exemptions provided in section 13 of the Act.

§ 779.273 Computations for period beginning September 3, 1961, the effective date of the 1961 Amendments.

The effective date of the 1961 Amendments is September 3, 1961. To determine the obligations under the Act as of that date, under the method described above, the period of four calendar quarters ending June 30, 1961, may be used. If the employer used the fiscal year basis for computations, the four quarters of the fiscal year immediately preceding September 3, 1961, may be used to make the computations.

Subpart D—Exemptions for Certain Retail or Service Establishments**GENERAL PRINCIPLES****§ 779.300 Purpose of subpart.**

Subpart C of this part discusses 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 with the exemptions from the Act's minimum wage and overtime provisions found in section 13(a) 1(2), (4), (13), (19) and

(20) for employees of retail or service establishments. If all the requirements set forth in any of these exemptions are met, the minimum wage and overtime provisions of the Act need not be complied with by an employer 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.

Sections 13(a) 1(2), (4), (13), (19) and (20) of the Act, as amended, grants exemptions from the minimum wage provisions of section 6 and the maximum hours provisions of section 7 as follows:

13(a) (2) 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, 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 or 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 of both) is not for resale and is recognized as retail sales or services in the particular industry; or

13(a) (4) 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; or

13(a) (13) 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; or

13(a) (19) any employee of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks, or farm implements; or

13(a) (20) 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; * * *

"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 sections 13(a) (2), (4) and (19). Therefore, if the establishment meets the tests enumerated in these sections, employees "employed by" that establishment are 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 employment of the particular employee. Such an exemption is set forth in section 13(a) (20). To determine whether the exemption of this section applies it is necessary to determine both that the establishment meets the enumerated tests and that the employee is engaged in the enumerated activities. Thus, under section 13(a) (20) some of the employees of a given employer may be exempt from sections 6 and 7, while others are 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 multi-unit operations. In such a multi-unit 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 paragraph, 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. 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 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.

The discussion in § 779.305, however, does not mean 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 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 in the work of the exempt establishment itself in activities within the scope of its 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. (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 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. (*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 from 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); *Wallington 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 non-exempt 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 both exempt and non-exempt establishments of same employer.

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 non-exempt 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 his employer's 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.

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 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. Rep. 145, 87th Cong., 1st Sess. p. 27; H.R. 75, 87th Cong., 1st Sess. 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 per cent of its sales of goods or services, or of both, must be recognized as retail in the particular industry; and (c) not over 25 per cent of its sales of goods or services, or of both, may be sales for resale. These requirements are discussed below in §§ 779.314 and 779.335.

**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 and 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 and after the 1949 amendments. It also 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 d/b/a Typing & Mailing Unlimited, 15 WH Cases 100, 42 LC Par. 31, 126 (CA-9); Telephone Answering Service v. Goldberg, 15 WH Cases 67, 42 LC Par. 31, 104 (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.

§ 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 dba Commercial Credit Bureau, 138 F. Supp. 214 (D. Hawaii); Mill v. United States Credit Bureau, 1 W.H. Cases 878, 5 Labor Cases par. 60,992 (S.D. Calif.)).
Advertising agencies including billboard advertising.
Aircraft and aeronautical equipment; establishments engaged in the business of dealing in.
Airports.
Armored car companies.
Art; commercial art firms.

Auto-wreckers' and junk dealers' establishments (Bracey v. Luray, 138 F. 2d 8 (CA-4)).
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.
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.
Butchers' equipment; establishments engaged in the business of dealing in.
Chambers of Commerce.
Chemical equipment; establishments engaged in the business of dealing in.
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 supply and equipment establishments.
Detective agencies.
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 dba Typing and Mailing Unlimited, 15 W.H. Cases 100, 42 LC par. 31,126 (CA-9); Durkin v. Shone, 112 F. Supp. 375 (E.D. Tenn.); Hanzely v. Hooven Letters, 44 N.Y.S. 2d 398 (City Ct. N.Y. 1943)).
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.
Geological surveys; firms engaged in making.
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.
Investment counselling 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.
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.
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. Montague, 140 F. 2d 500 (CA-4); cf. Walling v. Thompson, 65 F. Supp. 686 (S.D. Calif.)).
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.)).
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)).
Pharmacists' supplies; establishments engaged in the business of dealing in.
Plumbers' equipment; establishments engaged in the business of dealing in.
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 W.H. Cases 543, 7 Labor Cases, par. 61, 721 (M.D. Tenn.)).
Radio and Television broadcasting stations and studios.
Real estate companies.
Security dealers.
Ship equipment, commercial; establishments engaged in the business of dealing in.
Sign-painting shops.
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.
Telegraph 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 W.H. 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.
Travel agencies.
Trust companies.

Undertakers' supplies; establishments engaged in the business of dealing in. 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.

Watchmen, guards and detectives for industries; establishments engaged in supplying (Walling v. Sondock, 132 F. 2d 77 (CA-5); Walling v. Wattam, 3 W.H. Cases 726, 8 Labor Cases, par. 62,023 (W.D. Tenn. 1943); Walling v. Lum, 4 W.H. 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 W.H. 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)).

Window displays; establishments engaged in the business of dealing in.

§ 779.318 Characteristics and examples of retail or service establishments.

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 779.351.) 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, hospitals, valet shops, and other such local establishments.

§ 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 avail-

able 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 service 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.
Theatres.
Tourist houses.
Trailer camps.
Undertakers.
Valet shops.
Variety shops.
Watch, clock and jewelry repair establishments.

"RECOGNIZED" AS RETAIL "IN THE PARTICULAR INDUSTRY"

§ 779.321 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. In applying this requirement it must be determined whether the sales or services of an establishment are recognized as retail sales or services in the particular industry. To do this 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.

§ 779.322 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 sales 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 sale occupies in any branch of that industry.

§ 779.323 Recognition "in".

The express terms of the statutory provision require 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 93 Cong. Rec. pp. 12,501, 12,502, and 12,510; *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.

§ 779.324 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 service in a 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. The responsibility for making final decisions, of course, rests with the courts.

§ 779.325 Sources of information.

In determining whether a sale or service is recognized as a retail sale or service in a particular industry, there already 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 and 1961 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 for determining generally and in some cases specifically what sales or services are recognized as retail sales or services in particular industries. These standards and criteria are discussed above in §§ 779.321 to 779.323.

§ 779.326 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 does not necessarily prove that such sales or services are recognized in the particular industry as retail.

§ 779.327 Retail and wholesale distinguished.

(a) The distinction between a retail sale and a wholesale 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.

(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.

§ 779.328 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 any one 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.

SALES NOT MADE FOR RESALE

§ 779.329 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 derived 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.

§ 779.330 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 W.H. Cases 71, 31 L.C. Par. 70,287 (S.D. Cal. 1956) accord, *Mitchell v. Sherry Corine Corporation*, 264 F. 2d 831 (CA-4) (sales of meals to airlines for distribution to their passengers).) It should be noted, however, that transfers of goods from one retail or service establishment to another under the same ownership will not be considered as sales for resale.

§ 779.331 Resale of goods in an altered form or as parts or ingredients of other goods.

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, a 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 W.H. Cases 807, 25 L.C. Par. 68, 119 (N.D. Ill., 1954).)

§ 779.332 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.

§ 779.333 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 second-hand 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 moth proofing services in order to render satisfactory storage services for its customers, the sale of such moth proofing services to that storage establishment will be considered a sale for resale.

§ 779.334 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. Nayol & Co. v. Mitchell*, 280 F. 2d 477 (CA-1); *Elder v. Phillips & Buttriff Mfg. Co.*, 23 LC 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.)

§ 779.335 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. 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)

§ 779.336 Requirements of exemption summarized.

An establishment which is a "retail or service establishment" within the Act's statutory definition of that term (see discussion in §§ 779.312 to 779.335) must, to qualify as an exempt retail or service establishment under section 13(a)(2) of the Act, meet both of the following tests:

(a) 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

(b) Either:

(1) The retail or service establishment must not be in an enterprise of the type described in section 3(s), or

(2) If the retail or service establishment is in an enterprise of the type described in 3(s) it:

(i) Has an annual volume of sales (exclusive of excise taxes at the retail level which are separately stated) of less than \$250,000, or

(ii) Is a hotel, motel, restaurant, or motion picture theater; or is an amusement or recreational establishment that operates on a seasonal basis; or it 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 or gifted children.

§ 779.337 Effect of 1961 amendments.

The 1961 amendments narrowed the then existing section 13(a)(2) exemption by excluding therefrom otherwise qualified retail or service establishments in covered enterprises. (For a discussion of covered enterprises, see §§ 779.236 to 779.255.) When, however, a retail or service establishment is not in a covered enterprise it will still be exempt under section 13(a)(2) if it meets the requirements of the exemption. In addition, certain retail or service establishments, even though in a covered enterprise, may have annual sales, exclusive of certain excise taxes, of less than \$250,000 or may otherwise be specifically excepted in the exemption. Such establishments, too, will be exempt establishments, if they meet the other requirements of the exemption.

SALES MADE WITHIN THE STATE

§ 779.338 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.

§ 779.339 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. On the one hand, 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 that 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.

§ 779.340 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.

RETAIL OR SERVICE ESTABLISHMENTS IN COVERED ENTERPRISES

§ 779.341 Establishment in covered enterprises not exempt.

The 1961 amendments further narrowed the section 13(a)(2) exemption by adding a second test that an establishment must meet in order to qualify for exemption. The new requirement is that the establishment must not be in a covered enterprise of the type described in section 3(s)(1) through (5), or if it is in such an enterprise then it must be specifically excepted in the exemption. (A discussion as to "covered enterprises" can be found in §§ 779.236 to 779.261.)

§ 779.342 Exception for small stores in covered enterprises.

Section 13(a)(2) of the Act continues the exemption from the pay provisions of the Act for any retail or service establishment in a covered enterprise which has an annual dollar volume of sales of goods or services (exclusive of certain excise taxes) of less than \$250,000, if such an establishment meets all other requirements of the 13(a)(2) exemption. The requirements of the 13(a)(2) exemption are discussed in §§ 779.336 to 779.344. In computing the \$250,000 sales test, excise taxes at the retail level which are separately stated are not included. A discussion of what excise taxes may be excluded is contained in §§ 779.263 to 779.266.

§ 779.343 Exception for certain named establishments in covered enterprises.

By specific provision, section 13(a)(2) of the Act continues the exemption from the pay provisions of the Act for certain named types of establishments in covered enterprises if they meet all other requirements of the exemption. These requirements are discussed in §§ 779.336 to 779.341. The establishments named are: hotels; motels; restaurants; motion picture theaters; amusement or recreational establishments operating on a

seasonal basis; hospitals or institutions primarily engaged in the care of the sick, the aged, the mentally ill, or the defective residing on the premises; and, schools for physically or mentally handicapped or gifted children. An establishment which is in a covered enterprise described in section 3(s) must be in one of the specifically named groups in order to qualify for the 13(a)(2) exemption. Each of the specifically named types of establishments is discussed later in this subpart. (See §§ 779.381 to 779.390.)

COMPUTING ANNUAL DOLLAR VOLUME AND COMBINATION OF EXEMPTIONS

§ 779.344 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 percentages of the "annual dollar volume of sales" of goods or of services (or both). 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 whether the establishment qualifies under the percentage tests of the exemption are the same as the methods of calculating whether the annual volume of sales of an enterprise or an establishment meets the statutory dollar tests. These are discussed in §§ 779.267 to 779.273.

§ 779.345 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.

ENGAGING IN MANUFACTURING AND PROCESSING ACTIVITIES; SECTION 13(a)(4)

§ 779.346 Exemption provided in section 13(a)(4).

The section 13(a)(4) exemption exempts any employee employed by an 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.

§ 779.347 Requirements for exemption summarized.

An establishment to qualify for exemption under section 13(a)(4) must be an exempt establishment under section 13(a)(2), and, in addition, 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 *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388).

§ 779.348 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, 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.)

§ 779.349 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. 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) Also 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 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 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.

§ 779.350 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

§ 779.338.) 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.

§ 779.351 The selection (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)(13)

§ 779.352 Exemption provided.

Section 13(a)(13) 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 provisions of sections 6 and 7 of the Act would not otherwise apply.

§ 779.353 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), certification denied, 33 U.S. 862), and (4) the exemption applies only where the telegraphic message revenue does not exceed \$500 a month. For purposes of this exemption, 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

§ 779.354 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.

COAL DEALERS

§ 779.355 May qualify as exempt 13(a)(2) establishment; 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, all sales of coal to the consumer from a dealer's yard storage, where bulk is broken, are recognized as retail except the following sales which 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

§ 779.356 May qualify as exempt 13(a)(2) or 13(a)(4) establishment.

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.

§ 779.357 Classification of ice sales.

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, all sales of ice will be regarded as retail except:

(a) Sales for resale.

(b) 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 non-retail categories described in paragraphs (c) and (d) of this section.

(c) Sales of ice in railroad car lots.

(d) Sales of ice of a ton or more.

(e) 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.

§ 779.358 Ice plants recognized as retail establishments.

The legislative history indicates that ice plants are among the establishments which may qualify as retail establishments under the section 13(a)(4) exemption. It appears that all ice plants are manufacturing establishments of the same general type, permitting no separate classifications with respect to recognition as retail establishments. Any ice plant 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.

§ 779.359 Employees working in both sales and manufacturing portions of ice plant.

There are some ice plants 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 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 DEALERS

§ 779.360 May qualify as exempt 13(a)(2) establishment.

A liquefied-petroleum-gas 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 exempt from the overtime provisions of the Act under section 13(b)(10). This overtime exemption is discussed in a separate bulletin.) Liquefied-petroleum-gas means butane, propane and mixtures of butane and propane gases.

§ 779.361 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, all 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 except the following:

(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.

(b) *Sales or repairs of tanks.* Sales or repairs of tanks for the storage of liquefied-petroleum-gas is 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 the 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 tractors, trucks, 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 installations of such units to be used in industrial machinery or equipment; and (3) sales and installations made on the basis described in subparagraph (2) of paragraph (a) of this section or in quantity as described in subparagraph (3) of paragraph (a) of this section.

FEED DEALERS

§ 779.362 May qualify as exempt 13(a)(2) or 13(a)(4) establishment.

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.

§ 779.363 Classification of feed sales; custom grinding and mixing.

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, all sales of feed to feeders will be considered to be retail sales except any sale of feed for shipment by rail car 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. 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 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.

§ 779.364 Grinding and mixing feed for sale under section 13(a)(4).

Employees employed in the grinding and mixing of feed for sale (as distinguished from the grinding and mixing services discussed in § 779.363) 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). One of the requirements of the section 13(a)(4) exemption is 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 will be considered to have met this requirement (a) if less than 50 percent of its sales are composed of feed manufactured at the establishment; (b) if its sales of feeds manufactured at the establishment constitute more than 50 percent of the total sales of the establishment but 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 §§ 779.267 to 779.273 for the computation of sales.

MONUMENT DEALERS

§ 779.365 May qualify as exempt 13(a)(2) or 13(a)(4) establishment.

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.

§ 779.366 Types of monument dealer establishments.

Monument dealers' establishments may be roughly divided into four types: (a) 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.

(b) 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.

(c) Establishments which purchase finished and semi-finished work. The semi-finished 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.

(d) 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.

§ 779.367 Classification of monument sales and processing activities.

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 tombstone or monument 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 sand-blasting 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 semi-finished or rough granite or marble or other stone into finished monuments such as the work performed in establishments described in paragraphs (c) and (d) of § 779.366 are engaged in the making or processing of goods and are not, for that reason, 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.

§ 779.368 Monument dealer establishments recognized as retail.

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 paragraph (c) of § 779.366 which receives finished stock and in addition receives some semi-finished 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 (d) of § 779.366, 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

§ 779.369 May qualify as exempt 13(a)(2) or 13(a)(4) establishments.

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.

§ 779.370 Classification of sales of frozen-food locker plants.

(a) *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.

(b) *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 by-products 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.

§ 779.371 Locker plants making meat sales to public.

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 § 779.345. 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. It should also be noted that section 7(c) of the Act provides an exemption from its overtime requirements (but not from the minimum wage requirements) during not more than 14 workweeks in each calendar year for employees employed in a place of employment where their employer is engaged in handling, slaughtering or dressing poultry or livestock. This exemption may be claimed for employees in such a place of employment who are engaged only in performing such handling, slaughtering, and dressing operations and operations necessarily incident thereto, in the event that such employees are found not to come within the 13(a)(4) exemption under the principles discussed in this section.

AUTOMOTIVE TIRE ESTABLISHMENTS

§ 779.372 May qualify as exempt 13(a)(2) or 13(a)(4) establishment.

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.

§ 779.373 Classification of tire sales.

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, all sales of tires, tubes, accessories and tire repair services, including retreading and recapping, are recognized as retail in the industry, except:

(a) Sales for resale: 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.

(b) 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 de-

livery in accordance with prescribed terms and specifications. Sales to the Federal, State, and local governments are typically made in this manner.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

§ 779.374 Recapping or retreading tires for sale.

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.

§ 779.375 Establishments recognized as retail.

For purposes of meeting the retail recognition requirement of section 13(a)(4), an establishment engaged in retreading or recapping of tires is recognized as a retail establishment in the industry if it does not derive from the sale of tires retreaded and recapped for sale more than 50 percent of the annual dollar volume of its sales resulting from its retreading and recapping operations.

COMMERCIAL STATIONERS

§ 779.376 Commercial stationers may qualify as exempt 13(a)(2) establishment.

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, brief cases, calendars, clocks, greeting cards, thumb tacks, typewriter ribbons, carbon paper, paper clips, ink, commercial envelopes and typewriter paper, filing supplies and similar items. In addition they 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.

§ 779.377 Classification of sales made by commercial stationers.

In determining whether, under the 13(a)(2) exemption, 75 percent of the establishment's sales are recognized as retail sales, the sales made by commercial stationery establishments which in general operate as described in § 779.376, the following position is adopted for enforcement purposes: All sales of stationery, office supplies and equipment, office furniture and office machinery commonly stocked by commercial stationers, including typewriters, adding machines, small duplicating machines, check-writers, and the like, will be considered to be retail except for the sales set out below:

(a) 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.

(b) 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.

(c) Sales made at a quantity discount of 30 percent or more from the price of the ordinary unit of sale.

(d) Sales of school supplies to municipalities, boards of education, or schools

in the same manner as the sales of school supply distributors described in § 779.380.

(e) 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.

(f) Sales of specialized machinery and equipment.

§ 779.378 Printing and engraving establishments not recognized as retail.

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.

§ 779.379 Combined stationers and printing or engraving establishments.

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.

SCHOOL SUPPLY DISTRIBUTORS

§ 779.380 Lack "retail concept".

(a) Establishments engaged in the sale of school supplies and equipment to educational institutions and municipal boards of education are not eligible for exemption under section 13(a)(2) of the Act because in such businesses a concept of retail selling or servicing does not exist. For a discussion of establishments lacking "retail concept" see § 779.316.

(b) School supply distributors are dealers who specialize in the sale of school supplies and equipment to educational institutions and municipal boards of education. They handle all types of school supplies, other than text books, such as pencils, chalk, paper, maps and globes, as well as blackboards, school furniture, laboratory and playground equipment. They generally buy direct from the manufacturer. On the larger and more expensive items, such as class-

room seating and audio-visual equipment, they are usually granted exclusive franchises. They operate almost exclusively through outside salesmen who regularly call on all the schools and school boards within their assigned area.

(c) School supply distributors do not, generally, operate stores with stocks of merchandise from which over-the-counter sales are made, nor do they attempt to sell to the general consuming public. Where they do maintain stores, they are operated in effect as showrooms for displaying their merchandise to school officials. The distributors warehouse most of the supplies. However, heavy equipment, such as classroom seating and laboratory equipment, are shipped directly from the manufacturer to the school. The distributor is responsible for the delivery of this equipment and also arranges for and supervises its installation.

(d) The supplies and equipment are specially designed for school use. Nearly all of the sales are made to schools or school systems. Their price lists are established for the purpose of dealing with schools. Their occasional sales to dealers for resale are made at small discounts from these school prices. Many of the sales to schools are made on a contract basis as a result of competitive bidding.

RETAIL OR SERVICE ESTABLISHMENTS FOR WHICH SPECIAL EXCEPTIONS OR EXEMPTIONS ARE PROVIDED**§ 779.381 Establishments within special exceptions or exemptions.**

As stated in § 779.343, the 1961 Amendments continue to apply the exemption from the pay provision of the Act in section 13(a)(2) for certain specifically named establishments even if such establishments are an enterprise or part of an enterprise described in section 3(s) of the Act. Such establishments, of course, must meet all the other conditions for exemption under section 13(a)(2). In addition, the amendments provide for specific exemption from the pay provisions of the Act in section 13(a)(19) for any employee of a retail or service establishment primarily engaged in the business of selling automobiles, trucks or farm implements and in section 13(a)(20) for any employee of a retail or service establishment performing specified food preparation or food service activities. In the sections which follow in this subpart these exceptions and exemptions will be discussed.

HOTELS AND MOTELS

§ 779.382 May qualify as exempt 13(a)(2) establishment.

A hotel or a motel establishment may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act, even if it is in an enterprise described in section 3(s). Thus the 13(a)(2) exemption will be applicable irrespective of the annual dollar volume of sales of the establishment or of the enterprise of which it is part. The establishment must however meet all other requirements of the 13(a)(2) exemption. These requirements are discussed above in §§ 779.336 to 779.340.

§ 779.383 Hotel and motel defined.

(a) *Definition of "hotel."* The term "hotel" as used in section 13(a)(2) 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. 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, private residences commonly known as tourists homes, and apartment or residential hotels which provide no accommodations for transients. Resort or other hotels even if they operate seasonally are regarded as hotels.

(b) *Definition of "motel."* The term "motel" as used in section 13(a)(2) means an establishment which provides services similar to that of a "hotel" described in paragraph (a) of this section, but which caters mostly to the motor- ing 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.

(c) *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 engage in some minor revenue producing activities; such as, the operation of laundries, valet shops, 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(a)(2) 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 13(a)(2) establishment.**

A motion picture theater may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act, even if it is in an enterprise described in section 3(s). Thus the 13(a)(2) 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. The establishment however must meet all other requirements of the 13(a)(2) exemption. These requirements are discussed above in §§ 779.336 to 779.340. The term "motion picture theater" as used in section 13(a)(2) 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" com-

monly known as "open air" or "drive-in" theaters. "Legitimate theaters" primarily engaged in exhibiting stage productions are not "motion picture theaters."

SEASONAL AMUSEMENT OR RECREATIONAL ESTABLISHMENTS**§ 779.385 May qualify as exempt 13(a)(2) establishment.**

An amusement or recreational establishment operating on a seasonal basis may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act, even if it is in an enterprise described in section 3(s). Thus the 13(a)(2) 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. The establishment however must meet all other requirements of the 13(a)(2) exemption. These requirements are discussed above in §§ 779.336 to 779.340. "Amusement or recreational establishments operating on a seasonal basis" as used in section 13(a)(2) are establishments frequented by the public for its amusement or recreation and which are open for 6 months or less a year. Typical examples of such are the concessionaires at amusement parks and beaches. (S. Rep. No. 145, 87th Cong. 1st Sess. 28 (1961); H.R. Rep. No. 75, 87th Cong. 1st Sess. 10 (1961).)

HOSPITALS AND NURSING HOMES**§ 779.386 May qualify as exempt 13(a)(2) establishments.**

(a) *General.* A hospital or an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective residing on the premises may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act, even if it is in an enterprise described in section 3(s). Thus the 13(a)(2) 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. The establishment however must meet all other requirements of the 13(a)(2) exemption. These requirements are discussed above in §§ 779.336 to 779.340.

(b) *Hospital defined.* The term "hospital" as used in this section of the Act refers to those establishments commonly known as "hospitals" which primarily engage in the offering of medical and surgical services to patients who generally remain at the establishment either overnight, several days or for extended periods. Clinics and dispensaries are not included within the term "hospital" as used in this section unless operated by a hospital in the hospital establishment.

§ 779.387 "Institutions primarily engaged in the care of the sick, the aged, the mentally ill, or the defective residing on the premises" defined.

"Institutions primarily engaged in the care of the sick, the aged, the mentally ill, or defective, residing on the premises" as used in section 13(a)(2) of the Act means those establishments such as nursing homes, sanitariums, rest homes, and convalescent homes which care for

the sick and the aged who reside on the premises of such institutions.

SCHOOLS FOR HANDICAPPED OR GIFTED CHILDREN**§ 779.388 May qualify as exempt 13(a)(2) establishment.**

A school for physically or mentally handicapped or gifted children may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act, even if it is in an enterprise described in section 3(s). Thus the 13(a)(2) 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. The establishment however must meet all other requirements of the 13(a)(2) exemption. These requirements are discussed in §§ 779.336 to 779.340. "Schools for physically or mentally handicapped or gifted children" as used in section 13(a)(2) include those educational establishments catering to the needs of children who are physically handicapped, mentally handicapped, or gifted, such as talented children with a special faculty in music, art, mathematics or other fields.

RESTAURANTS AND ESTABLISHMENTS PROVIDING FOOD AND BEVERAGE SERVICE**§ 779.389 Restaurants may qualify as exempt 13(a)(2) establishments.**

A restaurant may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act, even if it is in an enterprise described in section 3(s). Thus the 13(a)(2) 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. The establishment however must meet all other requirements of the 13(a)(2) exemption. These requirements are discussed in §§ 779.336 to 779.340. It should be noted that a separate exemption is provided in section 13(a)(20) of the Act for certain food service employees not employed in a restaurant which qualifies for exemption under section 13(a)(2). Sections 13(a)(2) and 13(a)(20) also are intended to continue the exemption from the pay provisions of the Act, available prior to the 1961 amendments, for privately owned and operated restaurants in industrial plants, office buildings, Government installations, hospitals, or colleges, such as were involved in *McCombs v. Factory Stores*, 81 F. Supp. 403 (N.D. Ohio). (S. Rep. No. 145, 87th Cong. 1st Sess. 28; H.R. Rep. No. 75, 87th Cong. 1st Sess. 10.)

§ 779.390 "Restaurant" defined.

The term "restaurant" as used in section 13(a)(2) of the Act means an establishment which is primarily engaged in selling 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 non-alcoholic beverages. Certain food or beverage service employees of establishments such as bars and cocktail lounges, however, may be exempt under section 13(a)(20), a discussion of which follows.

§ 779.391 Exemption provided for food or beverage service employees.

A special exemption is provided in section 13(a)(20) of the Act for food or beverage service employees of retail or service establishments. This section excludes from the pay provisions in sections 6 and 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.

§ 779.392 Requirements for 13(a)(20) exemption.

The 13(a)(20) exemption will apply only if the following two tests are met:

(a) The employee must be an employee of a retail or service establishment; and

(b) 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 minimum wage and overtime provisions of the Act.

§ 779.393 The establishment must be a "retail or service establishment".

(a) 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(a)(20) if 75 percent or more of the establishment's annual dollar volume of sales of goods or service (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

(b) If the establishment comes within this definition it is immaterial that the establishment is in an enterprise or part of an enterprise described in section 3(s). Thus section 13(a)(20) 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. Also the legislative history indicates that section 13(a)(20) was intended to continue the exemption from the pay provisions of the Act, available prior to the 1961 Amendments, for

the employees engaged in the food service activities described even if performed in retail or service establishments within industrial plants, office buildings, Government installations, and the like. (See § 779.389).

(c) 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 * * *"

§ 779.394 Employees employed "primarily in food or beverage service activities".

(a) 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(a)(20) 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 clean-up 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.

(b) 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 almost all of their time to the described food or beverage service activities. For administrative purposes this exemption will not be defeated for any employee who in any workweek devotes 20 percent or less of his hours of work to activities other than those specifically described in the exemption.

AUTOMOBILE, TRUCK AND FARM IMPLEMENT DEALERS

§ 779.395 Exemption in section 13(a)(19).

A specific exemption from the provisions of sections 6 and 7 is provided in section 13(a)(19) of the Act for employees of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks,

or farm implements. This exemption is applicable even if the establishment is in an enterprise described in section 3(s). Thus it will apply irrespective 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 such an establishment does not have to show that 50 percent of its annual sales are made within the State in which it is located, to qualify for the 13(a)(19) exemption. This exemption will apply only if the following two tests are met by the establishment:

(a) The establishment must be a retail or service establishment; and

(b) The establishment must be primarily engaged in the business of selling automobiles, trucks, or farm implements.

If both of the above tests are met by an establishment the exemption will be available for all "employees of" the establishment. An explanation of which employees are considered to be "employees of" the establishment is contained in §§ 779.307 to 779.311.

§ 779.396 Retail or service establishment.

An establishment primarily engaged in selling automobiles, trucks, or farm implements, to qualify for exemption under section 13(a)(19) 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 section 779.24 of Subpart A; the application of the definition is considered at length earlier in this subpart. In accordance with this definition, such a dealer's establishment will be a "retail or service establishment" for purposes of section 13(a)(19) 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 industry.

§ 779.397 Sales of automobiles, trucks, and farm implements which are recognized as retail.

(a) *General.* The principles that were applicable to the classification, as retail or non-retail, of sales made by automobile, truck or farm implement dealers, for purposes of applying the section 13(a)(2) exemption prior to the 1961 amendments, will continue to govern the classification of such sales made by dealers for purposes of applying the section 13(a)(19) exemption in determining whether the establishment is a "retail or service establishment."

(b) *Automobile and truck sales.* All sales of automobiles, trucks, automobile parts, accessories, servicing and repair work will be considered as retail except the following:

(1) Sales for resale: For example, sales of automobiles, tires, accessories or services, to service stations, repair shops and automobile 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. However, this does not apply to transfers of such items between departments within the dealer's establishment. Thus,

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. So also accommodation transfers of automobiles between dealers will be disregarded in computing the establishment's sales for purposes of this exemption. Accommodation transfers refer to occasional exchanges or transfers of automobiles between dealers and not to situations where a dealer supplies cars to other dealers as part of what may be described as a distribution system.

(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: (As used in this subparagraph a "fleet account" is a customer operating five or more automobiles or trucks for business purposes).

(i) *Automobiles and trucks.* Sales of automobiles and trucks to national fleet accounts as designated by the various automotive manufacturers, at fleet discounts, and sales to other fleet accounts at discounts equivalent to those provided in sales to national fleet owners.

(ii) *Automotive parts and accessories.* Sales of parts and accessories to fleet accounts at wholesale prices. Wholesale prices are prices equivalent to, or less than, those typically charged on sales for resale.

(4) Sales of specialized heavy motor vehicles or bodies (16,000 lbs. and over gross vehicles weight): The following is a complete list of these items:

(i) Single unit trucks:

Armored (money carrying).
Buses (integral).
Coal.
Drilling.
Dump.
Hook and ladder (fire department).
Chemical wagons (fire department).
Garbage.
Mixer.
Refrigerator.
Special public utility.
Street-cleaning.
Tank.
Wrecker.

(ii) Full trailers and semitrailers (tractor and semitrailer and truck and trailer combinations):

Auto carrier.
Coal.
Dump.
Garbage.
House carrier.
Low bed carry all.
Pole (lumber).
Refrigerator.
Tank.
Van.

(5) Sales of servicing and repair work 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.

(c) *Farm implement sales.* All 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) except the following:

(1) Sales for resale: For example, sales of 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, are sales for resale. However, this does not apply to transfers of such items between departments within the dealer's establishment. Thus, 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. Such transfers from one department to another will be disregarded in computing the establishment's sales for determining the applicability of this exemption. So also accommodation transfers of farm implements between dealers will be disregarded in computing the establishment's sales for purposes of this exemption. Accommodation transfers refer to occasional exchanges or transfers of farm implements between dealers and not to situations where a dealer supplies farm implements to other dealers as part of what may be described as a distribution system.

(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 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.

(d) It should be noted that the concept of fleet sales discussed in paragraph (b) of this section does not apply to sales to farmers, even though the farmer uses five or more vehicles on his farm. Further, any receipts derived from warehousing, water well drilling or manufacturing activities performed by the dealer are not receipts from retail sales. These activities and the manufacturing of farm implements are not retail activities.

§ 779.398 "Primarily engaged."

This exemption, by its terms, applies only to those establishments which are

primarily engaged in the business of selling automobiles, trucks, or farm implements. Establishments such as auto rental establishments, garages, repair shops, which are not "primarily" engaged in such business, but which may sell some automobiles, trucks or farm implements only as an incident to their principal activities, are not within this exemption. Whether an establishment is "primarily" engaged in the business of selling automobiles, trucks, or farm implements depends on all the facts. For administrative purposes an establishment will be regarded as primarily engaged in such business if more than 50 percent of the establishment's annual dollar volume of sales is derived from the sales of automobiles, trucks or farm implements.

Subpart E—Provisions Relating to Certain Employees of Retail or Service Establishments

GENERAL PRINCIPLES

§ 779.400 Purpose of subpart.

The 1961 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.

§ 779.401 Pre-1961 exemption for employee "employed in a bona fide local retailing capacity" eliminated.

In order to make effective the extension of protection under the Act to sales personnel of the retail or service establishments who are covered by virtue of section 3(s) (1), the exemption in section 13(a) (1) for employees employed in a "local retailing capacity" was eliminated by the 1961 amendments to the Act. (See S. Rep. No. 145, 87th Cong., 1st Sess. 29 (1961); H.R. Rep. No. 75, 87th Cong., 1st Sess. 11 (1961).)

EXECUTIVE, ADMINISTRATIVE AND PROFESSIONAL EMPLOYEES AND OUTSIDE SALESMEN

§ 779.402 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, 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).

§ 779.403 "Executive" and "administrative" employees, defined.

The terms "executive" and "administrative" as used in section 13(a) (1) have appeared therein prior to the 1961 amendments and have been 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 amended provision, does, however, liberalize, in one respect, the pre-1961 regulations as they pertain to executive and administrative employees of retail or service establishments. That is, 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, whereas, in any other type of establishment such a tolerance is limited to 20 percent, Part 541 of this chapter except where special provisions are made in those regulations.

§ 779.404 Administrative and executive employees in 3(s)(1) or 3(s)(5) enterprises employed in other than retail or service establishments.

The 40 percent tolerance for non-executive or non-administrative 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.

§ 779.405 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 3(s)(1) or 3(s)(5) enterprise in order to qualify as a bona fide "professional employee" or 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 40 percent tolerance discussed in § 779.404 for "administrative and executive employees" of a retail or service establishment does not apply to the "professional employee" or the "outside salesman."

STUDENT-LEARNERS AND HANDICAPPED WORKERS

§ 779.406 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 or orders of the Secretary issued under section 14.

Section 14 of the Act provides that:

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 (1) the employment of learners, of apprentices, of messengers employed primarily in delivering letters and messages, and of full-time students outside of their school hours in any retail or service establishment: *Provided*, That such employment is not of the type ordinarily given to a full-time employee, 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, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the Secretary, at such wages lower than the minimum wage applicable under section 6 and for such period as shall be fixed in such certificates.

§ 779.407 "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 § 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 work day 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."

§ 779.408 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. Regulations for learners in the retail industry will be issued and promulgated in the FEDERAL REGISTER. General learner regulations are set forth in §§ 522.1 to 522.11, of this chapter.

§ 779.409 "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. Regulations with respect to the employment of such students will be issued and promulgated in the FEDERAL REGISTER. The legislative history states that: "The purpose of this provision is to provide employment opportunities for students who desire to work part time outside of their school hours without displacement of adult workers." (S. Rep. 145, 87th Cong., 1st Sess., p. 29.)

§ 779.410 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

§ 779.411 Statutory provision.

Section 7(h) of the Act provides that:

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 one month) represents commissions on goods or services.

There are briefly set forth, in §§ 779.412 to 779.415, some guiding principles for determining the type of commission employees that may meet the conditions set forth in section 7(h). It should be noted that, generally, retail or service establishments which are covered under the Act by virtue of the 1961 amendments are not required to, but may, pay overtime compensation prior to September 3, 1963.

§ 779.412 Conditions for meeting section 7(h) requirements.

Employees of "retail or service establishments" who are paid on a commission basis need not be paid extra compensation for overtime hours worked in a workweek, provided the following conditions are met:

(a) The regular rate of pay of such employee must be in excess of 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 commission on goods or services.

§ 779.413 "Retail or service establishment."

In order for the section 7(h) exemption from the overtime pay requirement to be met the employee must be employed by a retail or service establishment. The term "retail or service establishment" is not defined in section 7(h) of the Act but is defined in section 13(a)(2) and is quoted in § 779.24; the application of the definition is considered at length in Subpart D of this part. In accordance with this definition a "retail or service establishment" for purposes of section 7(h) is 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.

§ 779.414 Regular rate of pay must exceed one and one-half times employee's applicable minimum.

One of the conditions that must be met under section 7(h) is that the employee's regular rate of pay must exceed one and one-half times his applicable statutory minimum rate. (§ 778.3 of this chapter—the Interpretative Bulletin on Overtime Compensation—defines and discusses "regular rate of pay.") As explained in § 778.3, the regular rate of pay may not be less than the applicable minimum rate under section 6 of the Act. The regular rate is generally computed by dividing the total compensation received by the employee in any workweek by the number of hours he has worked in the workweek for which the compensation was paid. For example, to meet this requirement of section 7(h), a commission employee in a retail or service establishment who is covered for the first time under the Act by the 1961 amendments, must receive total remuneration (excepting statutory exclusions, see § 778.4 of this chapter) which is equal to more than \$1.50 per hour for the hours worked by him in the workweeks during the period from September 3, 1963 to September 2, 1964, since the statutory minimum is \$1.00 an hour for such an employee during this period.

§ 779.415 More than one-half of compensation must represent commissions on goods or services.

Another condition that must be met under section 7(h) of the Act is that more than one-half of the employee's compensation for a representative period must represent commissions on goods or services. The Act provides that this determination be made on the basis of a representative period of not less than one month. Where the employee's earnings from commission on goods or services exceed his earnings from all other types of payments during the period for which the calculation is made, this requirement will be met.

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 provisions in the latter category.

CHILD LABOR PROVISIONS

§ 779.501 Child labor provisions in 29 CFR 4.101-4.129.

Sections 4.101-4.129 in Subtitle A of this title contain a detailed discussion of the child labor provisions of the Act. Although those sections offer guidance for all including retailers, the brief discussion in §§ 779.502 and 779.508 are of particular interest to those in the retail field.

§ 779.502 Statutory provisions.

Child labor provisions:

SEC. 12. (a) 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 thirty 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.

(b) The Secretary of Labor, or any of his authorized representatives, shall make all investigations and inspections under section 11(a) with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 17 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act relating to oppressive child labor.

(c) 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.

§ 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 amend-

ments are defined and described in § 4.105 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 persons engaged in buying, selling, trading, distributing, delivering, etc. "Dealers," therefore, as used in section 12(a) includes 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. For example, establishments such as hotels, restaurants, etc., in covered enterprises, and 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, every enterprise which is covered under the Act, such as the 3(s)(1) and 3(s)(5) enterprises, 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 a particular establishment or establishments of a covered 3(s)(1) or 3(s)(5) enterprise are exempt from the requirement of compensating its employees in accordance with sections 6 and 7 of the Act.

§ 779.505 "Oppressive child labor," defined.

Section 3(1) 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 sixteen 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 sixteen 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 sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen 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 detrimental 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 fourteen and sixteen 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 Regulation No. 3 (29 CFR 4.31-4.37) 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); except office and sales work performed in connection with the occupations specified in

this subparagraph does not apply if such work is 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.

§ 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 for minors 16 and 17 years of age. These occupations may be found in §§ 4.51-4.66 of this title. Of particular interest to retailers are §§ 4.52, 4.58, 4.62 and 4.63 of this title pertaining to the occupations of motor-vehicle driver and 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 or 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 or 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.

RECORDS TO BE KEPT BY EMPLOYEES

§ 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 of 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 three 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 two years.

§ 779.515 Regulations should be consulted.

The discussion in subpart F 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 25th day of August 1961.

CLARENCE T. LUNDQUIST,
Administrator.

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