

Act. If all the requirements set forth in any of these exemptions are met, to the extent provided therein the employer is relieved from complying with the minimum wage and/or overtime provisions of the Act even though his employees are engaged in interstate or foreign commerce or in the production of goods for such commerce or employed in covered enterprises.

**§ 779.301 Statutory provisions.**

(a) Section 13(a) (2), (4), (11), and section 13(b)(18) of the Act, as amended, grant exemption from the minimum wage provisions of section 6 and the maximum hours provisions of section 7 as follows:

(1) Section 13(a)(2) exempts from minimum wages and overtime pay:

Any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s) or such establishment has an annual dollar volume of sales which is less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated). A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

(2) Section 13(a)(4) exempts from minimum wages and overtime pay:

Any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located.

(3) Section 13(a)(11) exempts from minimum wages and overtime pay:

Any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under clause (2) of this subsection with respect to

whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed \$500 a month.

(4) Section 13(b)(18) exempts from overtime pay only:

Any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curbside or counter service, to the public, to employees, or to members or guests of members of clubs.

(b) Sections 13(a)(2), (4), (13), (19), and (20) of the prior Act granted exemptions from both the minimum wage provisions of section 6 and the maximum hours provisions of section 7 as follows:

(1) Section 13(a)(2) exempted:

Any employee employed by any retail or service establishment, more than 50 per centum of which establishment's annual dollar volume of sales of goods or services is made within the state in which the establishment is located, if such establishment—

(i) Is not in an enterprise described in section 3(s), or

(ii) Is in such an enterprise and is a hotel, motel or restaurant, or motion picture theater; or is an amusement or recreational establishment that operates on a seasonal basis, or

(iii) Is in such an enterprise and is a hospital, or an institution which is primarily engaged in the care of the sick, the aged, the mentally ill or defective, residing on the premises of such institution, or a school for physically or mentally handicapped 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 both) is not for resale and is recognized as retail sales or services in the particular industry.

(2) Section 13(a)(4) provided the same exemption as it now does.

(3) Section 13(a)(13) provided the same exemption as section 13(a)(11) of the present Act.

(4) Section 13(a)(19) exempted:

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## § 779.304

Any employee of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks, or farm implements.

(5) Section 13(a)(20) exempted those employees who are now exempt from the overtime provisions only under section 13(b)(18) of the present Act.

(c) Employees who were exempt from the minimum wage and overtime pay requirements under a provision of the prior Act set forth in paragraph (b) of this section, but are no longer exempt from one or both of such requirements under the present Act must be paid minimum wages or overtime pay, as the case may be, in accordance with the pay standards provided for newly covered employment, in any workweek when they perform work within the individual or enterprise coverage of the Act.

### “ESTABLISHMENT” BASIS OF EXEMPTIONS

#### § 779.302 Exemptions depend on character of establishment.

Some exemptions depend on the character of the establishment by which an employee is employed. These include the “retail or service establishment” exemptions in sections 13(a) (2), (4), and (11) and the exemptions available to the establishments of the character specified in sections 13(a) (3), (9), and 13(b)(8) (first part). Therefore, if the establishment meets the tests enumerated in these sections, employees “employed by” that establishment are generally exempt from sections 6 and 7. (See §§779.307 to 779.309 discussing “employed by.”) Other exemptions establish two criteria, the character of the establishment and the nature of the conditions of the employment of the particular employee. Such exemptions are set forth in section 13(b)(8) (second part), and section 13(b)(18) and (19). To determine whether the exemptions of these sections apply it is necessary to determine both that the establishment meets the enumerated tests and that the employee is engaged in the enumerated activities or employed under the conditions specified. Thus, under section 13(b)(18) some of the employees of a given employer may be exempt from the overtime pay re-

quirements (but not the minimum wage) of the Act, while others may not.

#### § 779.303 “Establishment” defined; distinguished from “enterprise” and “business.”

As previously stated in §779.23, the term *establishment* as used in the Act means a distinct physical place of business. The “enterprise,” by reason of the definition contained in section 3(r) of the Act and the tests enumerated in section 3(s) of the Act, may be composed of a single establishment. The term “establishment,” however, is not synonymous with the words “business” or “enterprise” when those terms are used to describe multiunit operations. In such a multiunit operation some of the establishments may qualify for exemption, others may not. For example, a manufacturer may operate a plant for production of its goods, a separate warehouse for storage and distribution, and several stores from which its products are sold. Each such physically separate place of business is a separate establishment. In the case of chain store systems, branch stores, groups of independent stores organized to carry on business in a manner similar to chain store systems, and retail outlets operated by manufacturing or distributing concerns, each separate place of business ordinarily is a separate establishment.

#### § 779.304 Illustrations of a single establishment.

(a) The unit store ordinarily will constitute the establishment contemplated by the exemptions. The mere fact that a store is departmentalized will not alter the rule. For example, the typical large department store carries a wide variety of lines which ordinarily are segregated or departmentalized not only as to location within the store, but also as to operation and records. Where such departments are operated as integral parts of a unit, the departmentalized unit taken as a whole ordinarily will be considered to be the establishment contemplated by the exemptions, even if there is diversity of ownership of some of the departments, such as leased departments.

(b) Some stores, such as bakery or tailor shops, may produce goods in a