

material, such as sales of liquefied-petroleum-gas for the production of chemicals and synthetic rubber; and

(4) Sales of liquefied-petroleum-gas for use as truck or bus fuel and the repair and servicing of trucks and buses used in over-the-road commercial transportation (including parts and accessories for such vehicles).

(b) *Sales or repairs of tanks.* Sales or repairs of tanks for the storage of liquefied-petroleum-gas are recognized as retail in the industry, except: (1) Any tank exceeding 1,000 gallons in capacity; (2) any tank sold or repaired on the basis described in paragraph (a) (2) of this section or for the purposes described in paragraph (a)(3) of this section; and (3) sales in quantity larger than involved in the ordinary sales to a farm or household customer.

(c) *Conversion units.* Sales and installation of units for converting pumps, stoves, furnaces and other equipment and appliances to the use of liquefied-petroleum-gas, are recognized as retail sales except: (1) Sales of the installation of such conversion units which involve substantial modification of the appliance or equipment; (2) sales and installation of such units to be used in industrial machinery or equipment; (3) sales and installations made on the basis described in paragraph (a)(2) of this section or in quantity as described in § 779.327; and (4) sales and installation of such units for vehicles mentioned in paragraph (a) (4) of this section.

§ 779.361 Classification of other fuel oil sales.

(a) Sales of fuel oil (as differentiated from sales of butane and propane gases) are classified as retail and nonretail sales as follows:

(1) Retail sales—all sales of grades No. 1, No. 2, and No. 3 of fuel oil direct to householders for their own domestic uses;

(2) Nonretail sales:

(i) All sales of grades No. 4, No. 5, and No. 6 fuel oil as these heavy oils are "special purpose" goods to which the retail sales concept has no application (See § 779.321);

(ii) All sales for resale including such sales to peddlers and other dealers (See §§ 779.331-779.334);

(iii) All sales made pursuant to a formal invitation to bid (See § 779.328(d)).

(b) In some cases the retail or non-retail status of an establishment may turn on sales other than those listed above. In such cases all the facts relative to such sales shall be considered in arriving at a determination. The classification of such sales depends upon whether they are recognized as retail sales. In such cases particular attention shall be given to the quantities involved and the prices charged.

FEED DEALERS

§ 779.362 May qualify as exempt 13(a)(2) or 13(a)(4) establishments.

(a) An establishment engaged in selling feed may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Similarly an establishment making and processing the feed it sells may qualify as an exempt establishment under section 13(a)(4) of the Act if it meets all the requirements of that exemption.

(b) In determining whether, under the 13(a)(2) exemption, 75 percent of the establishment's sales are not for resale and are recognized as retail sales in the industry, sales of feed to feeders will generally meet the requirements for such classification as previously explained in this subpart and will ordinarily be considered to be retail sales except for the following which do not meet the requirements and are not recognized as retail: Any sale of feed for shipment by railcar direct to the feeder; and sales made at a quantity discount which results in a price comparable to or lower than the establishment's price to dealers for resale or, if the establishment makes no sales to other dealers, at a price comparable to or lower than the price prevailing in the immediate area in sales by similar establishments to dealers for resale.

(c) The custom grinding and mixing of feed (including the addition of supplements) for feeders from the grain they themselves bring in will be regarded as the performance of a service, and not the making or processing of goods for sale under section 13(a)(4). Such services are recognized as retail

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services in the industry and the revenue derived therefrom will be included with the retail receipts of the establishment.

(d) Employees employed in the grinding and mixing of feed for sale (as distinguished from the grinding and mixing services discussed in paragraph (c) of this section) are engaged in the making or processing of goods and are therefore not exempt under section 13(a)(2). In order for these employees to be exempt, the establishment by which they are employed must meet all the requirements of section 13(a)(4), including the requirement that the establishment must be recognized as a retail establishment in the particular industry. The typical small feed mill engaged in selling goods to farmers appears to be recognized as retail in the industry. There are, of course, large mills which are essentially factories which are not so recognized. As an enforcement policy an establishment which qualifies for exemption under section 13(a)(2) will be considered to have met this requirement: (1) If less than 50 percent of its retail sales are composed of feed manufactured at the establishment; or (2) if its sales of feeds manufactured at the establishment do not exceed 2,000 tons a year. In determining these tests for the applicability of the exemption, the computation of the sales of feed manufactured will be made on an annual basis in the same manner as set forth in §§ 779.265 through 779.269 for the computation of sales.

MONUMENT DEALERS

§ 779.363 May qualify as exempt 13(a)(2) or 13(a)(4) establishments.

(a) An establishment engaged in the sale of monuments and memorials may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Similarly, an establishment making or processing the monuments it sells may qualify as an exempt establishment under section 13(a)(4) of the Act if it meets all the requirements of that exemption.

(b) Monument dealers' establishments may be roughly divided into four types;

(1) Establishments which are engaged exclusively in selling monuments and memorials from designs. They receive their monuments from a manufacturer completely finished and lettered and they then erect the monuments.

(2) Establishments which purchase finished monuments from manufacturers, display them, carve or sand-blast lettering or incidental decoration to order, and set them in cemeteries or elsewhere.

(3) Establishments which purchase finished and semi-finished work. The semifinished work consists of sawed, steeled, or polished granite slabs or sand-rubbed marble. In such a case the establishments will cut ends, tops, or joints on dies and may shape a base.

(4) Establishments which purchase stone in rough form and perform all the fabricating operations in their own plants. In such a case the establishments may saw or line-up the rough stones, machine surface and polish the stone and then perform the other operations necessary to complete the monument. They may finish the monuments for display or on special order and then erect them.

(c) In determining whether, under the 13(a)(2) exemption, 75 percent of the establishment's sales are not for resale and are recognized as retail sales in the industry, the ordinary sale of a single tombstone or monument to the ultimate purchaser will be considered as a retail sale within the meaning of the exemption. If the monument dealer establishment meets all the tests of the 13(a)(2) exemption all employees employed by it will be exempt under that exemption except those employees who are engaged in the making or processing of the goods. However, carving or sandblasting of lettering or incidental decoration or erecting the monuments, is considered processing incidental to the making of retail sales and would not defeat the 13(a)(2) exemption for employees performing such work. Employees who engage in processing semifinished or rough granite or marble or other stone into finished monuments such as the work performed in establishments described in paragraphs (b) (3) and (4) of this section