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U. S. DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington

APRIL 9 MADE FILING DATE FOR WAGE-HOUR HEARING  
ON "EXECUTIVE," ETC., IN WHOLESALE DISTRIBUTIVE TRADES

Postponement from April 3 to April 9 of the date for filing written statements and notices of intention to appear in connection with the hearing on "executive," "administrative," "professional," and "outside salesman" as the terms are used in the wholesale distributive trades to define exempt employees under the Fair Labor Standards Act, was announced today by Colonel Philip B. Fleming, Administrator of the Wage and Hour Division, U. S. Department of Labor. (Federal Register, April 3, 1940.) The hearing will be before Harold Stein, the presiding officer designated, at 10:00 o'clock on Wednesday, April 10, in the Washington Hotel.

Colonel Fleming announced yesterday that representatives of groups in fields other than the wholesale distributive trades, who believe that their interests may be affected by definitions issued as a result of the hearing, will also be permitted to file legal briefs and participate in oral argument if any is had at the hearing.

The postponement was announced because many had sought further details on the scope of the hearing after it was first announced on March 18, and might be denied the opportunity to participate if they were held to the April 3 closing date.

In answer to the suggestion that wider publication be given the proposals to change the definitions which form the basis of the hearing, the present definition, Part 541 of the Wage and Hour Regulations, and the proposed changes, are listed herewith. While the proposed changes in wording are sweeping in coverage, the sole question before the April 10 hearing, as delimited in the Notice of Hearing, is what change if any should be made in the definitions of the terms involved with respect to the wholesale distributive trades.

Section 541 reads as follows:

"Section 541.1 -- Executive and administrative

The term 'employee employed in a bona fide executive (and) administrative \* \* \* capacity' in section 13 (a) (1) of the Act shall mean any employee whose primary duty is the management of the establishment, or a customarily recognized department thereof, in which he is employed, and who customarily and regularly directs the work of other employees therein, and who has the authority to hire and fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and who customarily and regularly exercises discretionary powers, and who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer, and who is compensated for his services at not less than \$30 (exclusive of board, lodging, or other facilities) for a workweek.

Section 541.2 -- Professional

The term 'employee employed in a bona fide \* \* \* professional \* \* \* capacity' in section 13 (a) (1) of the Act shall mean any employee --

(a) who is customarily and regularly engaged in work --

(i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work, and

(ii) requiring the consistent exercise of discretion and judgment both as to the manner and time of performance, as opposed to work subject to active direction and supervision, and

(iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and

(iv) based upon educational training in a specially organized body of knowledge as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual, mechanical, or physical processes in accordance with a previously indicated or standardized formula, plan or procedure, and

(b) who does no substantial amount of work of the same nature as that performed by nonexempt employees of the employer.

Section 541.3 -- Local retailing capacity

The term 'employee employed in a bona fide \* \* \* local retailing capacity' in section 13 (a) (1) of the Act shall mean any employee who customarily and regularly is engaged in making retail sales the greater part of which are in intrastate commerce, or who performs work immediately incidental thereto, such as the wrapping or delivery of packages, and who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer.

Section 541.4 -- Outside salesman

The term 'employee employed \* \* \* in the capacity of outside salesman' in section 13 (a) (1) of the Act shall mean any employee who customarily and regularly performs his work away from his employer's place or places of business, who is customarily and regularly engaged in making sales as defined in Section 3 (k) of the Act and who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer. For the purposes of this definition, recurrent routine deliveries, whether or not prior orders are placed by the purchasers, and collections, shall not be considered sales.

Section 541.5 -- Petition for amendment of regulations

Any person wishing a revision of any of the terms of the foregoing regulations may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, either in support of or in opposition to the proposed changes. In determining such future regulations, separate treatment for different industries and for different classes of employees may be given consideration.

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Approved by the Administrator, October 19, 1938.  
Published in the Federal Register, October 20, 1938."

Changes in Wording of Part 541 Proposed by AMERICAN RETAIL FEDERATION:

"The term 'employee ... employed in a bona fide executive ... capacity' in Section 13 (a)(1) of the Act shall mean any employee who is entrusted with responsibility as to the method by which and the time during which he executes his work, and who determines important policy

questions, or who requires special financial, merchandising or other technical and non-manual skill to execute his work and who receives compensation at a rate not less than \$30 a week."

Changes in Wording of Part 541 Proposed by SOUTHERN STATES INDUSTRIAL COUNCIL:

"The term 'employee employed in a bona fide ... administrative ... capacity' in Section 13 (a)(1) of the Act shall mean any employee whose duties are connected solely with the administration of an industry, and shall embrace clerical employees, such as bookkeepers, stenographers, pay-roll clerks, auditors, cost accountants, purchasing agents, statisticians, and / or other office help regularly employed on a straight salary basis and given vacations and sick leave with pay."

Changes in Wording of Part 541 Proposed by the COUNCIL OF NATIONAL WHOLESALE ASSOCIATIONS:

"Change Sections 541.1, 541.2, 541.4 to read as follows:

541.1. (a) 'The term "employee employed in a bona fide executive capacity" in Section 13 (a)(1) of the Act shall mean any employee whose primary duty is the management of the establishment, or a customarily recognized department thereof, in which he is employed, and who customarily and regularly directs the work of other employees therein, and who has the authority to hire and fire other employees or whose suggestions and recommendations as to hiring and firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and who customarily and regularly exercises discretionary power, and who is compensated for his services at not less than \$35 (exclusive of board, lodging, or other facilities) for a workweek.'

(b) 'The term "employee employed in a bona fide administrative capacity" in Section 13 (a)(1) of the Act shall mean any employee who customarily and regularly directs the work of other employees in a recognized department of the establishment and whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of employees will be given particular weight, and who customarily exercised discretionary powers, and who is compensated for his services at not less than \$25 (exclusive of board, lodging, or other facilities) for a workweek.'

541.2. 'The term "employee employed in a bona fide ... professional ... capacity" in Section 13 (a)(1) of the Act



shall mean any employee

(a) who is customarily and regularly engaged in work

(i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work, and

(ii) requiring the consistent exercise of discretion and judgment both as to the manner and time of performance, as opposed to work subject to active direction and supervision, and

(iii) of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and

(iv) based upon educational training in a specially organized body of knowledge as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual, mechanical or physical processes in accordance with a previously indicated or standardized formula, plan or procedure.'

541.4. 'The term "employee employed ... in the capacity of outside salesman" in Section 13 (a)(1) of the Act shall mean any employee who customarily and regularly performs his work away from his employer's place or places of business, who is customarily and regularly engaged in making sales as defined in Section 3 (k) of the Act and who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer.'

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