

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington, D. C.

"RETAIL" STATUS UNDER WAGE-HOUR LAW CLARIFIED

Acting on reports received from inspectors, attorneys and others in the field force, on the manner in which the administration of the Fair Labor Standards Act can best be practically adapted to business practice and custom, Colonel Philip B. Fleming, Wage and Hour Division, U. S. Department of Labor, has issued instructions to all field forces, containing a new rule to determine whether an establishment is a "retail establishment" and as such specifically exempt from the requirements of the Fair Labor Standards Act, it was announced today.

The term "retail sales" means "sales to individual consumers," the inspectors have been instructed.

"A sale for industrial or business purposes as distinguished from private consumption, is not a retail sale," the inspectors have been advised.

"A retail establishment is one in which 50 per cent or more of the dollar value of total sales are retail sales."

"This should clarify the coverage of many merchandising establishments about which there was some doubt," Colonel Fleming said. "It sets a definite criterion by which to determine what commercial establishments are retail and what commercial establishments are wholesale."

Heretofore, if more than a minor part of an establishment's business was wholesale, it had been treated as a wholesale establishment.

Through the use of this new "yardstick" against which a firm's business will be measured in determining coverage of the law, the Wage and Hour administration took its second step within the month to clarify the application of the Fair Labor Standards Act to the wholesale field. Petitions for redefinition of the terms "executive," "administrative," "professional" and "outside salesman," as they are used to describe exempt categories of employees under the Fair Labor

Standards Act in the wholesale distributive trades, were the subject of a week's hearings which closed yesterday, before Harold Stein, Assistant Director of the Hearings Branch, who had been designated by Colonel Fleming to preside. Upon assuming office as Administrator, Colonel Fleming announced his intention to advise, as promptly as possible, business, labor and the public generally of the manner in which the law would be administered in what heretofore has been regarded as borderline or twilight zones. The action announced today clarifying the Administrator's concept of a "retail establishment," and the re-examination of the definitions "executive," etc., in the wholesale distributive trades, are part of that program.

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