such different obligations are required.

II. *It is ordered* That respondents Kirby of North Providence, Inc., a corporation, its successors and assigns, and its officers, and Emanuel Toro, individually and as an officer of said corporation, trading under said corporate name or trading or doing business under any other name or names, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit, or advertisement to aid, promote, assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to disclose the date on which the finance charge begins to accrue when that date is different from the date of the transaction, as required by § 226.8(b)(1) of Regulation Z.

2. Failing to disclose the finance charge expressed as an annual percentage rate, as required by § 226.8(b)(2) of Regulation Z.

3. Failing to disclose the downpayment in property made in connection with the credit sale, and to describe that amount as the "trade-in," as required by § 226.8(c)(2) of Regulation Z.

4. Failing to disclose the "deferred payment price" as the sum of the cash price, all other charges which are part of the amount financed but are not part of the finance charge, and the finance charge, as required by § 226.8(c)(8)(ii) of Regulation Z.

5. Failing to make consumer credit cost disclosures before consummation of the transaction, and to furnish the customer with a duplicate of the instrument or a statement by which the disclosures required by § 226.8 are made, as prescribed by § 226.8(a) of Regulation Z.

6. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form, and amount required by §§ 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondent corporation shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in (a) the offering for sale or sale of respondents' products or services or in the consummation of any extension of consumer credit or in (b) any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging the receipt of the order from each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Decision and order issued by the Commission Nov. 1, 1974.

CHARLES A. TOBIN,
Secretary.

[FR Doc.75-4435 Filed 2-18-75;8:45 am]

[Docket No. C-2579]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Bob's Muldoon Lockers, et al.

Subpart—Advertising falsely or misleadingly: § 13.73 *Formal regulatory and statutory requirements;* 13.73-92 Truth in Lending Act; § 13.155 *Prices;* 13.155-95 Terms and conditions; 13.155-95(a) Truth in Lending Act. Subpart—Misrepresenting oneself and goods—Prices: § 13.1823 *Terms and conditions;* 13.1823-20 Truth in Lending Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements;* 13.1852-75 Truth in Lending Act; § 13.1905 *Terms and conditions;* 13.1905-60 Truth in Lending Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601-1605) [Cease and desist order, Muldoon Lockers, Inc., et al., Anchorage, Alaska, Docket C-2579, Oct. 22, 1974]

In the matter of Muldoon Lockers, Inc., a corporation doing business as Bob's Muldoon Lockers, and Bob R. Buchta, individually and as an officer of said corporation.

Consent order requiring an Anchorage, Alaska, retailer of meat and meat products, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows: [1]

It is ordered, That respondents Muldoon Lockers, Inc., a corporation doing business as Bob's Muldoon Lockers, and Bob R. Buchta, individually and as an officer of said corporation, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any extension or arrangement for the extension of consumer credit, or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z (12 CFR 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Representing in any such advertisement, directly or by implication, the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are stated in terminology prescribed under § 226.8 of Regulation Z as required by § 226.10(d)(2) of Regulation Z:

a. the cash price;

b. the amount of the downpayment required or that no downpayment is required, as applicable;

c. the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

d. the amount of the finance charge expressed as an annual percentage rate, and

e. the deferred payment price.

2. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of Regulation Z, at the time and in the manner, form and amount required by §§ 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of the preparation, creation or placing of advertising, to all persons engaged in reviewing the legal sufficiency of advertising, and to all present and future agencies engaged in preparation, creation or placing of advertising on behalf of respondents, and that respondents secure from each such person and agency a signed statement acknowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly

[1] Copies of the complaint & decision and order filed with the original document.

notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include the respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Decision and order issued by the Commission Oct. 22, 1974.

CHARLES A. TOBIN,
Secretary.

[FR Doc.75-4436 Filed 2-18-75;8:45 am]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 511—WAGE ORDER PROCEDURE FOR PUERTO RICO, THE VIRGIN ISLANDS, AND AMERICAN SAMOA

Compensation of Committee Members

Pursuant to authority in section 5 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, as amended; 29 U.S.C. 205) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp. p. 1004), I hereby amend 29 CFR 511.4 to read as set forth below. The purpose of this amendment is to increase the compensation of each member of an industry committee from $100 to $108 for each day spent in the work of the committee.

As this amendment concerns only a rule of agency practice, and is not substantive, notice of proposed rule making, opportunity for public participation, and delay in effective date are not required by 5 U.S.C. 553. It does not appear that such participation or delay would serve a useful purpose. Accordingly, this revision shall be effective immediately.

§ 511.4 Compensation of committee members.

Each member of an industry committee will be allowed a per diem of $108 each day actually spent in the work of the committee, and will, in addition, be reimbursed for necessary transportation and other expense incident to traveling in accordance with Standard Government Travel Regulations then in effect. All travel expenses will be paid on travel vouchers certified by the Administrator or his authorized representative. Any other necessary expenses which are incidental to the work of the committee may be incurred by the committee upon approval of, and shall be paid upon certification of, the Administrator or his authorized representative.

[Sec. 5, 52 Stat. 1062, as amended; 29 U.S.C. 205]

Signed at Washington, D.C. this 12 day of February 1975.

BETTY SOUTHARD MURPHY,
Administrator,
Wage and Hour Division.

[FR Doc.75-4431 Filed 2-18-75;8:45 am]

PART 541—DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESMAN"

Labor Standards

Section 13(a)(1) of the Fair Labor Standards Act of 1938, as amended, exempts from its minimum wage and overtime pay provisions any employee employed in a bona fide executive, administrative, or professional capacity, as such terms are defined and delimited by regulations of the Secretary of Labor. The Administrator of the Wage and Hour Division has been delegated the authority to issue such regulations, which are contained in 29 CFR 541. Among other conditions, these regulations currently provide that executive employees must be paid at a rate of not less than $125 a week on a salary basis ($115 a week if employed in Puerto Rico, the Virgin Islands, or American Samoa), that administrative employees must be paid at a rate of not less than $125 a week on a salary or fee basis ($100 a week if employed in Puerto Rico, the Virgin Islands, or American Samoa), and that professional employees must be paid at a rate of $140 a week on a salary or fee basis ($125 a week if employed in Puerto Rico, the Virgin Islands, or American Samoa). The regulations also contain a so-called upset salary test for certain employees who are paid not less than $200 a week ($150 a week if employed in Puerto Rico, the Virgin Islands, or American Samoa). All of these salary tests are exclusive of board, lodging, or other facilities.

On August 16, 1974, there was published in the FEDERAL REGISTER (39 FR 29603) a notice of proposed rulemaking to increase the minimum salary requirements of the exemption for bona fide executive, administrative, and professional employees. Interested persons were afforded the opportunity to submit written views, comments, data, or arguments within 30 days to the Administrator of the Wage and Hour Division, Washington, D.C. 20210. On September 17, 1974, a further notice was published in the FEDERAL REGISTER (39 FR 33377) extending the time for comment to October 29, 1974, and announcing a public hearing which was held in Washington, D.C. on October 22, 1974, as scheduled.

The August 16 notice, in order to make the salary tests in 29 CFR 541 more realistic and effective as qualifying requirements for exemption from the Act's monetary provisions, proposed that the salary tests in §§ 541.1(f) and 541.2(e) be increased to $160 per week for executive and administrative employees ($130 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa) and that the salary test in § 541.3(e) be increased to $185 per week for professional employees ($150 a week if employed in Puerto Rico, the Virgin Islands, or American Samoa). It was further proposed that the upset salary test in §§ 541.1(f), 541.2(e) and 541.3(e) be increased to $300 per week ($200 per week if employed in Puerto Rico, the Virgin Islands or American Samoa), and that the special salary test for the motion picture industry in § 541.5a be increased to $250 per week.

The August 16 notice made clear that these proposed rates would, when adopted, be in effect for an interim period pending the completion and analysis of a study by the Bureau of Labor Statistics covering a six-month period in 1975.

The rapid increase in the cost of living since the salary tests were last adjusted justifies an interim increase in those tests pending completion of this study. Now, as before, it is believed that the widely accepted Consumer Price Index may be utilized as a guide for establishing these interim rates. The increase in the Consumer Price Index between March 1970 (114.5) and February 1974 (141.5) was 23.67 percent. It was this percentage rate, plus an upward adjustment for anticipated added increases during the period between February and August, 1974, that formed the basis of the regular salary tests set forth in the August 16 proposal. The actual increases which took place during that period would have justified a slightly higher salary rate for executive and administrative employees ($164 per week) and a slightly lower one for professional employees ($183 per week). However, in order to eliminate any inflationary impact, the interim rates hereinafter specified are set at a level slightly below the rates based on the CPI. As thus modified, these interim rates should, on the basis of all the available information, including wage and salary data relating to nonexempt employees, be well within the figures revealed by the subsequent study to be made in 1975. Because the interim rates are somewhat more conservative than the subsequent study may justify, no distinction will be made for employees covered prior to the Fair Labor Standards Amendments of 1966 and those covered by subsequent amendments to the Act. Therefore, a regular salary of not less than $155 per week will be required for bona fide executive and administrative employees. The salary test for bona fide professional employees will be set at $170 a week, thus maintaining the differential which currently exists between the salary tests for these employees and for bona fide executive and administrative employees. These rates will become effective on April 1, 1975.

An upset salary test for higher salaried executive, administrative, and professional employees has been a part of the regulations since 1950. It was adopted for administrative convenience and contemplated that the salaries specified in the proviso would be high enough to include only individuals whose exempt status was not in question. A bona fide executive, administrative, or professional employee who does not meet this higher salary test would, of course, qualify for exemption under the regular salary test if the other basic requirements are also met. The proposed upset salary test was $300 a week, but a careful review of the record convinces me that this rate is too high. There are, however, considerations which warrant a proportionate increase in the upset salary test. For example, there are indications that certain employers are utilizing the high salary test to employ otherwise nonexempt employees (i.e., those who perform work in excess of the 20 percent tolerance for nonexempt work or the 40 percent tolerance allowed in the case of executive and administrative employees in retail and service establishments) for excessively long workweeks. Such employees do not qualify for exemption under the regulations' regular salary tests and some may no longer qualify for exemption under the interim upset salary test which, based on the record before me, is set at not less than $250 per week, to become effective on April 1, 1975.

The interim rates for Puerto Rico, the Virgin Islands, and American Samoa will be adopted as proposed; i.e., $130 per week for executive and administrative employees, $150 per week for professional employees, and $200 per week for such employees under the upset or special high salary proviso. These rates (which do not apply to employees of the Federal Government) are to become effective in Puerto Rico, the Virgin Islands and American Samoa on April 1, 1975.

The interim special salary requirement for the motion picture industry in § 541.5a will also be adopted as proposed: i.e., $250 per week, effective April 1, 1975.

These interim rates, pending completion of the study to be made in 1975, are necessary because present economic conditions have substantially impaired the current salary tests as effective guidelines for determining the exempt status of bona fide executive, administrative and professional employees. The present rates have become obsolete and interim rates are required to protect the interests of all concerned, including employees and employers, and to enable the Wage and Hour Division to administer the Act in a proper and equitable manner. The use of interim rates is not, however, to be considered a precedent.

Accordingly, Part 541 of Title 29, Code of Federal Regulations, is amended as follows:

1. Paragraph (f) of § 541.1 is revised to read as follows:

§ 541.1 Executive.

* * * * *

(f) Who is compensated for his services on a salary basis at a rate of not less than $155 per week (or $130 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That an employee who is compensated on a salary basis at a rate of not less than $250 per week (or $200 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section.

2. Paragraph (e) of § 541.2 is revised to read as follows:

§ 541.2 Administrative.

* * * * *

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than $155 per week ($130 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, or

(2) Who, in the case of academic administrative personnel, is compensated for services as required by paragraph (e)(1) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which employed: *Provided*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week ($200 per week if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging or other facilities, and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all the requirements of this section.

3. Paragraph (e) of § 541.3 is revised to read as follows:

§ 541.3 Professional.

* * * * *

(e) Who is compensated for services on a salary or fee basis at a rate of not less than $170 per week ($150 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week (or $200 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a)(1) or (3) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

4. Part 541 of Title 29, Code of Federal Regulations, is amended by adding a new section, § 541.52 as follows:

§ 541.52 Special provision for motion picture producing industry.

The requirements of §§ 541.1, 541.2, and 541.3 that the employee be paid "on a salary basis" shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $250 a week (exclusive of board, lodging, or other facilities).

5. Paragraphs (a) and (b) of § 541.117 are to read as follows:

§ 541.117 Amount of salary required.

(a) Except as otherwise noted in paragraph (b) of this section, compensation on a salary basis at a rate of not less than $155 per week, exclusive of board, lodging, or other facilities, is required for exemption as an executive. The $155 a week may be translated into equivalent amounts for periods longer than 1 week. The requirement will be met if the employee is compensated biweekly on a salary basis of $310, semimonthly on a salary basis of $335.84 or monthly on a salary basis of $671.67. However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an "executive" is $130 per week for other than an employee of the Federal Government.

* * * * *

6. Paragraph (b) of § 541.118 is amended to read as follows:

§ 541.118 Salary basis.

* * * * *

(b) *Minimum guarantee plus extras.*—It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not

inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of $155 or more a week and in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of the branch, if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that the employee will receive not less than the amount specified in the regulations in any week in which the employee performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis". For example, a salary of $200 in each week in which any work is performed, and an additional $50 which is made subject to deductions which are not permitted under paragraph (a) of this section.

* * * * *

7. Section 541.119 is revised to read as follows:

§ 541.119 Special proviso for high salaried executives.

(a) Except as otherwise noted in paragraph (b) of this section, § 541.1 contains an upset or high salary proviso for managerial employees who are compensated on a salary basis at a rate of not less than $250 per week exclusive of board, lodging, or other facilities. Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of § 541.1 if the employee's primary duty consists of the management of the enterprise in which employed or of a customarily recognized department or subdivision thereof and includes the customary and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test that employee's qualifications in detail under paragraphs (a) through (f) of § 541.1 of this Part.

(b) In Puerto Rico, the Virgin Islands, and American Samoa the proviso of § 541.1(f) applies to those managerial employees (other than employees of the Federal Government) who are paid on a salary basis at a rate of not less than $200 per week.

(c) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

8. Paragraphs (a) and (b) of § 541.211 are revised to read as follows:

§ 541.211 Amount of salary or fees required.

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than $155 a week, exclusive of board, lodging or other facilities, is required for exemption as an administrative employee. The requirement will be met if the employee is compensated biweekly on a salary basis of $310, semimonthly on a salary basis of $335.84, or monthly on a salary basis of $671.67.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an administrative employee is $125 per for other than an employee of the Federal Government.

* * * * *

9. Section 541.214 is revised to read as follows:

§ 541.214 Special proviso for high salaried administrative employees.

(a) Except as otherwise noted in paragraph (b) of this section, § 541.2 contains a special proviso including within the definition of "administrative" an employee who is compenstated on a salary or fee basis at a rate of not less than $250 per week exclusive of board, lodging, or other facilities, and whose primary duty consists of either the performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, or the performance of functions in the administration of a school system, or educational establishment or institution, or of a department of subdivision thereof, in work directly related to the academic instruction or training carried on therein, where the performance of such primary duty includes work requiring the exercise of discretion and independent judgment. Such a highly paid employee having such work as his or her primary duty is deemed to meet all the requirements in § 541.2(a) through (e). If an employee qualifies for exemption under this provisio, it is not necessary to test the employee's qualifications in detail under § 541.2 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the proviso of § 541.2(e) applies to those administrative employees other than an employee of the Federal Government who are compensated on a salary or fee basis of not less than $200 per week.

10. Paragraphs (a) and (b) of § 541.311 are to read as follows:

§ 541.311 Amount of salary or fees required.

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than $170 per week, exclusive of board, lodging or other facilities, is required for exemption as a "professional employee." An employee will meet this requirement if paid a biweekly salary of $340, a semimonthly salary of $368.33 or a monthly salary of $736.67.

(b) In Puerto Rico, the Virgin Islands, and American Samoa the salary test for exemption as a "professional" for other than employees of the Federal Government is $150 per week.

* * * * *

11. Paragraphs (c) and (d) of § 541.313 are revised to read as follows:

§ 541.313 Fee basis.

* * * * *

(c) The adequacy of a fee payment. Whether it amounts of payment at a rate of not less than $170 per week to a professional employee or at a rate of not less than $155 per week to an administrative employee can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate specified in the regulations in Subpart A of this part the amount paid to the employee will be tested by reference to a standard workweek of 40 hours. Thus compliance will be tested in each case of a fee payment by determining whether the payment is at a rate which would amount to at least $170 per week to a professional employee or at a rate of not less than $155 per week to an administrative employee if 40 hours were worked.

(d) The following examples will illustrate the principle stated above:

(1) A singer receives $50 for a song on a 15-minute program (no rehearsal time is involved). Obviously the requirement will be met since the employee would earn $170 at this rate of pay in far less than 40 hours.

(2) An artist is paid $100 for a picture. Upon completion of the assignment, it is determined that the artist worked 20 hours. Since earnings at this rate would yield the artist $200 if 40 hours were worked, the requirement is met.

(3) An illustrator is assigned the illustration of a pamphlet at a fee of $150. When the job is completed, it is determined that the employee worked 60 hours. If the employee worked 40 hours at this rate, the employee would have earned only $100. The fee payment of $150 for work which required 60 hours to complete therefore does not meet the requirement of payment at a rate of $170 per week and the employee must be considered nonexempt. It follows that if in the performance of this assignment the illustrator worked in excess of 40 hours in any week, overtime rates must be paid. Whether or not the employee worked in excess of 40 hours in any week, records for such an employee would have to be kept in accordance with the regulations covering records for nonexempt employees (Part 516 of this chapter).

12. Section 541.315 is revised to read as follows:

§ 541.315 Special proviso for high salaried professional employees.

(a) Except as otherwise noted in paragraph (b) of this section, the definition of "professional" contains a special proviso for employees who are compensated on a salary or fee basis at a rate of at least $250 per week exclusive of board, lodging, or other facilities. Under this proviso, the requirements for exemption in § 541.3 (a) through (e) will be deemed to be met by an employee who receives the higher salary or fees and whose primary duty consists of the performance

of work requiring knowledge of an advanced type in a field of science or learning, or work as a teacher in the activity of imparting knowledge, which includes work requiring the consistent exercise of discretion and judgement, or consists of the performance of work requiring invention, imagination, or talent in a recognized field of artistic endeavor. Thus, the exemption will apply to highly paid employees employed either in one of the "learned" professions or in an "artistic" profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test the employee's qualifications in detail under § 541.3 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa the second proviso of § 541.3(e) applies to those "professional" employees (other than employees of the Federal government) who are compensated on a salary or fee basis of not less than $200 per week.

13. Section 541.601 is revised to read as follows:

§ 541.601 Special provision for motion picture producing industry.

Under § 541.5a, the requirement that the employee be paid "on a salary basis" does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $250 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under §§ 541.1, 541.2, or 541.3 and who is employed at a base rate of at least $250 a week is exempt if he is paid at least pro rata (based on a week of not more than 6 days) for any week when he does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if he is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and his daily base rate would yield at least $250 if 6 days were worked; or (b) the employee is in a job category having a weekly base rate of at least $250 and his daily base rate is at least one-sixth of such weekly base rate.

The higher minimum salary tests will be effective on April 1, 1975.

(Sec. 13, Stat. 1067, as amended; 29 U.S.C. 213; Reorganization Plan No. 6 of 1950 (3 CFR 1945–53 Comp. p. 1004); Secretary's Order No. 13–71 (3 CFR 8755), and Employment Standards Order 1–74 (39 FR 33841).

Signed this 12th day of February at Washington, D.C.

BETTY SOUTHARD MURPHY,
Administrator,
Wage and Hour Division.

[FR Doc.75-4433 Filed 2-18-75;8:45 am]

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

Employers of Ten or Fewer Employees

1. *Purpose.* Notice is hereby given pursuant to the Administrative Procedure Act, 5 U.S.C. 552(a)(1)(D) and sections 8(d) and 8(g)(2) of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) (29 U.S.C. 657 (d) and (g)(2)) of the Department of Labor's interpretation of the funding limitation in Title I of the Appropriations Act for Fiscal Year 1975 (Pub. Law 93–517). That Act provides as follows: "None of the funds appropriated in this Act shall be used to require recordkeeping and reporting under the Occupational Safety and Health Act of 1970 from employers of ten or fewer employees, and such exclusion shall be governed by the current rules and regulations in CFR, Title 29, Chapter XVII, Part 1904.15." This notice does not amend 29 CFR Part 1904 because of the temporary nature of the funding limitation in the Pub. Law 93–517, but it sets out the scope of that limitation and its relation to State plans approved under section 18 of the Act. Notice of the funding limitation has been prepared as a rulemaking document in order to give the public the most effective notice possible.

2. *Scope.* The funding limitation under Pub. L. 93–517 is applicable to all employers of ten or fewer employees covered by the Act. As stated in the preamble to the notice of proposed rulemaking on 29 CFR 1904.15, the term "employee" is used without limitation. Therefore, the term is intended to include all employees, whether full-time employees, part-time employees, or seasonal employees (37 FR 14316, July 19, 1972).

3. *Requirements.* (a) In accordance with 29 CFR 1904.15(a), an employer who had no more than ten (10) employees at any one time during calendar year 1973 need not comply with any of the requirements of 29 CFR Part 1904, except § 1904.8 concerning fatalities or multiple hospitalization accidents (i.e., he need not prepare the log, OSHA 100, the supplementary record, OSHA 101, nor prepare or post the summary, OSHA 102).

(b)(1) When an employer with only eight, nine, or ten employees is notified in writing in March, 1975 by the Bureau of Labor Statistics that he has been selected to participate in a statistical survey of occupational injuries and illnesses for 1974, he must report to the Bureau of Labor Statistics on the basis of records kept during calendar year 1974 (see the legislative history, Cong. Record H 11099, November 26, 1974).

(2) The exception to complying with the requirements of 29 CFR Part 1904 in paragraph (a) of this section shall, in accordance with 29 CFR 1904.15(b), not apply when an employer of only eight, nine, or ten employees has been notified in writing by the Bureau of Labor Statistics that he has been selected to participate in a statistical survey of occupational injuries and illnesses for 1975. If selected, an employer will be required to maintain a log of occupational injuries and illnesses, OSHA 100, in accordance with 29 CFR 1904.2 and to make reports in accordance with 29 CFR 1904.-21 for the period of time which is specified in the notice.

4. State plans. Under section 18(c)(7) of the Act and 29 CFR 1902.3(k), a State plan is required to provide that employers maintain records and make reports to the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) in the same manner and to the same extent as if the State plan was not in effect. Those provisions do not limit State authority, under State law, to require additional data or to implement recordkeeping requirements for all employers regardless of the number of employees. This interpretation of State authority has been applied with respect to the limitation on recordkeeping requirements for employers of seven or fewer employees. (See 29 CFR 1952.4(a), 39 FR 29181, August 14, 1974). That regulation requires States with approved plans to adopt recordkeeping and reporting requirements which are substantially identical to 29 CFR Part 1904 and approves the extension of the State requirements to employers of seven or fewer employees. Since the funding limitation in Pub. L. 93–517 only applies to recordkeeping and reporting required under the Federal Act, States with approved State plans may, consistent with State law, require, or continue to require, that employers of ten or fewer employees comply with State recordkeeping and reporting requirements.

5. Public notice. Because this notice involves an interpretation of a statute, public comment is determined to be unnecessary as authorized by 5 U.S.C. 553.

6. Effective date. This notice is effective February 12, 1975, and will continue to be applicable for as long at the funding limitation in Pub. Law 93–517 remains in effect, unless modified or revised by the Assistant Secretary in the FEDERAL REGISTER.

(Secs. 8(d), 8(g)(2), 84 Stat. 1598 (29 U.S.C. 657(d), 657(g)(2)); 5 U.S.C. 552(a)(1)(D)).

Signed at Washington, D.C. this 12th day of February, 1975.

JOHN STENDER,
Assistant Secretary of Labor.

JULIUS SHISKIN,
Commissioner of Bureau of Labor Statistics.

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