aged, the mentally ill or defective residing on the premises of the institution, and schools for physically or mentally handicapped or gifted children. However, such institutions have been recognized as having a retail concept and where the nature of their operations has not changed and where they otherwise satisfy the Act's definition of a ''retail or service establishment'', certain food service employees employed by such institutions will be considered to be exempt from the Act's overtime pay provisions under section 13(b)(18), exemptions for their administrative or executive employees will not be defeated by nonexempt work occupying less than 40 percent of the employee's time, and full-time students may be employed in accordance with the special minimum wage provisions of section 14 of the Act and part 519 of this chapter.

SALES MADE WITHIN THE STATE

§ 779.339 More than 50 percent intrastate sales required.

The first test specified in section 13 (a)(2) is that more than 50 percent of the sales of goods or of services (or of both) of a ''retail or service establishment'' (Measured by annual dollar volume) must be made ''within the State in which the establishment is located''. This limitation means that such establishment must be primarily engaged (more than 50 percent) in selling to or serving customers within its State. If the establishment is engaged to the extent of 50 percent or more in selling to or serving customers outside the State of its location, the requirement is not met and the establishment cannot qualify for exemption.

§ 779.340 Out-of-State customers.

Whether the sale or service is made to an out-of-State customer is a question of fact. In order for a customer to be considered an out-of-State customer, some specific relationship between him and the seller has to exist to indicate his out-of-State character. Sales made to the casual cash-and-carry customer of a retail or service establishment, who, for all practical purposes, is indistinguishable from the mass of customers who visit the estab-

lishment, are sales made within the State even though the seller knows or has reason to believe, because of his proximity to the State line or because he is frequented by tourists, that some of the customers who visit his establishment reside outside the State. If the customer is of that type, sales made to him are sales made within the State even if the seller knows in the particular instance that the customer resides outside the State. On the other hand, a sale is made to an out-of-State customer and, therefore, is not a sale made ''within the State'' in which the establishment is located, if delivery of the goods is made outside the State. It should be noted that sales of goods or services that are conditioned upon acceptance or rejection by an out-of-State source are interstates sales and not sales made within the State for purposes of section 13(a)(2). For example, a contract entered into in the State where the customer resides for the delivery of a magazine to the customer's residence, is an interstate sale if the contract must be approved by the out-of-State home office of the company publishing the magazine before it becomes effective.

§ 779.341 Sales ''made within the State'' and ''engagement in commerce'' distinguished.

Sales to customers located in the same State as the establishment are sales made ''within the State'' even though such sales may constitute engagement in interstate commerce as where the sale: (a) Is made pursuant to prior orders from customers for goods to be obtained from outside the State; (b) contemplates the purchase of goods from outside the State to fill a customer's order; or (c) is made to a customer for use in interstate commerce or in production of goods for such commerce.

COMPUTING ANNUAL DOLLAR VOLUME AND COMBINATION OF EXEMPTIONS

§ 779.342 Methods of computing annual volume of sales.

The tests as to whether an establishment qualifies for exemption under section 13(a)(2) of the Act are specified in terms of the ''annual dollar volume of sales'' of goods or of services (or