

## 29 C.F.R. § 779.324

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### Recognition “in.”

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The express terms of the statutory provision requires the “recognition” to be “in” the industry and not “by” the industry. Thus, the basis for the determination as to what is recognized as retail “in the particular industry” is wider and greater than the views of an employer in a trade or business, or an association of such employers. It is clear from the legislative history and judicial pronouncements that it was not the intent of this provision to delegate to employers in any particular industry the power to exempt themselves from the requirements of the Act. It was emphasized in the debates in Congress that while the views of an industry are significant and material in determining what is recognized as a retail sale in a particular industry, the determination is not dependent on those views alone. (See 95 Cong. Rec. pp. 12501, 12502, and 12510; *Wirtz v. Steepleton General Tire Co.*, 383 U.S. 190; *Mitchell v. City Ice Co.*, 273 F. 2d 560 (CA-5); *Durkin v. Casa Baldrich, Inc.*, 111 F. Supp. 71 (DCPR) affirmed 214 F. 2d 703 (CA-1); see also *Aetna Finance Co. v. Mitchell*, 247 F. 2d 190 (CA-1).) Such a determination must take into consideration the well-settled habits of business, traditional understanding and common knowledge. These involve the understanding and knowledge of the purchaser as well as the seller, the wholesaler as well as the retailer, the employee as well as the employer, and private and governmental research and statistical organizations. The understanding of all these and others who have knowledge of recognized classifications in an industry, would all be relevant in the determination of the question.

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