

The order to cease and desist is as follows:

It is ordered, That respondents Parliament T.V. Tube Sales, Inc., a corporation, and its officers, and David Becker, Mort Posen, and Jack N. Friedman, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale and sale of rebuilt television picture tubes, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said television picture tubes are new.

2. Failing to clearly disclose on the tubes, on the cartons in which they are packed, on invoices and in advertising, that said tubes are rebuilt containing a used part.

3. Placing any means or instrumentalities in the hands of others whereby they may mislead the public as to the nature and condition of their television picture tubes.

4. Representing, directly or indirectly:
(a) That the corporate respondent has been in existence, or that corporate respondent or the individual respondents have been in business for any period or length of time that is not in accordance with the facts.

(b) That respondents are the world's largest television picture tube distributors.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That 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 the order to cease and desist.

Issued: July 25, 1961.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 61-7920; Filed, Aug. 17, 1961;
8:45 a.m.]

[Docket 8169 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Smith-Fisher Corp. et al.

Subpart—Advertising falsely or misleadingly: § 13.20 *Comparative data or merits*; § 13.70 *Fictitious or misleading guarantees*; § 13.205 *Scientific or other relevant facts*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Frank Fisher, Individually, Owosso, Mich., Docket 8169, July 25, 1961]

In the Matter of Smith-Fisher Corporation, a Corporation, and Jack D. Smith and Frank Fisher, Individually and as Officers of Said Corporation

Consent order requiring an individual in Owosso, Mich., to cease misrepresenting in advertisements in trade journals, newspapers, circulars, etc., the effectiveness, comparative qualities, guarantee, and other relevant facts concerning their "Super Atom" electrical fence charger used to prevent cattle from straying.

By separate consent order, this matter was disposed of Mar. 30, 1961 (26 F.R. 5254, June 13, 1961), as to the corporate manufacturer and one officer.

The order to cease and desist is as follows:

It is ordered, That respondent Frank Fisher, an individual, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a fence charger known as Super Atom Charger, or any other charger of substantially the same construction or operation, do forthwith cease and desist from representing directly or indirectly:

1. Said product is effective in confining farm animals in an enclosure under all climatic or fencing conditions without the use of insulators.

2. Said product is twenty times, or any other number of times, more short resistant than other fence chargers.

3. Green grass, brush, rain or ice will not cause a short in the operation of said product.

4. Said product will effectively or safely charge more than 10 miles of fence with insulators or will effectively or safely charge any stated number of miles of fence without insulators.

5. Said product has a mechanism that adjusts it to the various climatic conditions under which it will be operated.

6. Said product is guaranteed unless the nature and extent of the guarantee and the manner in which respondent will perform thereunder are clearly set forth.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Frank Fisher as an officer of Smith-Fisher Corporation.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondent Frank Fisher, an individual, shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: July 25, 1961.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 61-7921; Filed, Aug. 17, 1961;
8:45 a.m.]

Title 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 2—GENERAL REGULATIONS

Chapter IV—Bureau of Labor Management Reports, Department of Labor

PART 402—LABOR ORGANIZATION INFORMATION REPORTS

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

PART 405—EMPLOYER REPORTS

PART 406—LABOR RELATIONS CONSULTANT REPORTS

PART 407—PUBLICATION OF LABOR AND MANAGEMENT REPORTS

PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS

PART 415—LABOR ORGANIZATION ANNUAL FINANCIAL REPORT—FISCAL YEARS ENDING PRIOR TO DECEMBER 15, 1959

Public Records; Copies and Inspections

The purpose of this amendment of Title 29 of the Code of Federal Regulations is to provide a uniform rule for inspecting and obtaining copies of the several types of public records maintained by the Department of Labor.

Because this amendment is a rule of agency practice, no provision is made for public participation in its formulation. It shall be effective on and after September 17, 1961.

Accordingly, pursuant to the authorities cited in parentheses following the sections affected, Parts 2, 402, 403, 405, 406, 407, 408, and 415 of Title 29 of the Code of Federal Regulations are hereby amended as hereinbelow provided.

1. The centerhead preceding § 2.4 is hereby revised to read as follows: "Public Records".

2. Section 2.4 is hereby revised to read as follows:

§ 2.4 Copies and inspections.

(a) The papers and documents described in subparagraphs (1), (2), and (3) of this paragraph, may be examined or inspected by any person during regular business hours on any regular workday (Monday through Friday of each week, official Federal holidays excepted). Facsimile copies of such records and documents will also be furnished upon request. Except for copies duplicated for distribution for no fee, a fee of 25 cents will be charged for each facsimile page reproduction in a maximum size of 10½" x 15½". Such postal fees in excess of domestic first class postal rates as are necessary for transmittal of copies will be added to the per-page fee specified unless stamps or stamped envelopes are furnished with the request. The

Bureaus of the Department having custody of records covered by this section, the types of records that are open to public examination and inspection, and the addresses at which records may be examined and inspected or copies purchased, are as follows:

(1) *Bureau of Labor Statistics.* Collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes, maintained by the Department pursuant to section 211(a) of the Labor-Management Relations Act of 1947 (61 Stat. 156; 29 U.S.C. 181); other available statistical information, tables, studies, and reports, collected, collated and published or reported by the Bureau of Labor Statistics pursuant to the provisions of Title 29, Chapter 1 of the United States Code. Requests to inspect such documents will be denied with respect to any specific information submitted to the Department in confidence.

Address—

United States Department of Labor,
Bureau of Labor Statistics,
14th Street and Constitution Avenue NW.,
Washington 25, D.C.

(2) *Bureau of Labor Standards.* Copies of the descriptions of welfare or pension benefit plans, amendments or modifications thereto, and entire or individual pages of annual reports thereon, filed with the Bureau pursuant to section 8(b) of the Welfare and Pension Plans Disclosure Act of 1959 (72 Stat. 1002; 29 U.S.C. 307);

Address—

United States Department of Labor,
Bureau of Labor Standards,
Welfare and Pension Reports Division,
Public Documents Room—Mather Building,
916 G Street NW.,
Washington 25, D.C.

(3) *Bureau of Labor-Management Reports.* Data and information contained in any report or other document filed with the Bureau pursuant to sections 201, 202, 203, and 301 of the Labor-Management Reporting and Disclosure Act of 1959 (Parts 402, 403, 405, 408, and 415 of this title) (73 Stat. 524-528, 530; 29 U.S.C. 431-433, 461)

Address—

United States Department of Labor,
Bureau of Labor-Management Reports,
14th Street and Constitution Avenue NW.,
Washington 25, D.C.

(b) Upon request of the Governor of a State for copies of any reports or documents available under paragraph (a) (3) of this section or for information and data contained therein, which have been filed by any person whose principal place of business or headquarters is in such State, the Bureau of Labor-Management Reports shall:

(1) Make available without payment of a charge to the State agency designated by law or by such Governor, such requested copies or information and data, or;

(2) Require the person who filed such reports or documents, to furnish such copies or information and data directly to the State agency thus designated.

(c) Section 2.9, governing withdrawal of originals and copies of Departmental

records, shall not apply to the examination, inspection or furnishing of copies of reports and documents as provided by paragraph (a) of this section.

(61 Stat. 156, 72 Stat. 1002, 73 Stat. 529, 530; 29 U.S.C. 181, 307, 438, 461)

§ 2.11 [Amendment]

3. Paragraph (b) of § 2.11 is hereby revoked.

(61 Stat. 156; 29 U.S.C. 181)

4. The provisions in § 402.12 are hereby deleted and the following cross reference is substituted in their place:

§ 402.12 Publication of reports required by this part.

For provisions related to this subject see § 2.4 of this title.

(Sec. 208, 73 Stat. 529; 29 U.S.C. 438)

5. The provisions in § 403.10 are hereby deleted and the following cross reference is substituted in their place:

§ 403.10 Publication of reports required by this part.

For provisions related to this subject see § 2.4 of this title.

(Sec. 208, 73 Stat. 529; 29 U.S.C. 438)

6. The provisions in § 405.10 are hereby deleted and the following cross reference is substituted in their place:

§ 405.10 Publication of reports required by this part.

For provisions related to this subject see § 2.4 of this title.

(Sec. 208, 73 Stat. 529; 29 U.S.C. 438)

7. The provisions in § 406.8 are hereby deleted and the following cross reference is substituted in their place:

§ 406.8 Publication of reports required by this part.

For provisions related to this subject see § 2.4 of this title.

(Sec. 208, 73 Stat. 529; 29 U.S.C. 438)

8. Part 407 of Title 29 of the Code of Federal Regulations is hereby revoked.

(Sec. 208, 301, 73 Stat. 529, 530; 29 U.S.C. 438, 461)

9. The provisions in § 408.9 are hereby deleted and the following cross reference is substituted in their place:

§ 408.9 Publication of reports required by this part.

For provisions related to this subject see § 2.4 of this title.

(Sec. 301.73 Stat. 530; 29 U.S.C. 461)

10. The provisions in § 415.7 are hereby deleted and the following cross reference is substituted in their place:

§ 415.7 Publication of reports required by this part.

For provisions related to this subject see § 2.4 of this title.

(Sec. 208, 73 Stat. 529; 29 U.S.C. 438)

Signed at Washington, D.C., this 12th day of August 1961.

ARTHUR J. GOLDBERG,
Secretary of Labor.

[F.R. Doc. 61-7932; Filed, Aug. 17, 1961; 8:47 a.m.]

**Chapter V—Wage and Hour Division,
Department of Labor**

**PART 526—INDUSTRIES OF A
SEASONAL NATURE**

PART 548—AUTHORIZATION OF ESTABLISHED BASIC RATES FOR COMPUTING OVERTIME PAY

PART 785—HOURS WORKED

PART 791—JOINT EMPLOYMENT RELATIONSHIP UNDER FAIR LABOR STANDARDS ACT OF 1938

Miscellaneous Amendments

For the purpose of conforming certain parts of the Code of Federal Regulations established pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to the Fair Labor Standards Amendments of 1961 (Pub. Law 87-30), and pursuant to authority contained in the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), Reorganization Plan No. 6, of 1950 (3 CFR 1949-53 Comp., p. 1004), and General Order No. 45-A of the Secretary of Labor (15 F.R., 3290), I hereby amend Parts 526, 548, 785, and 791 as hereinbelow set out.

In view of the fact that these amendments are necessary to conform outstanding regulations and interpretations to the terms of the amendatory statute I find that notice and public procedure thereon are unnecessary. They shall become effective September 3, 1961, the effective date of the Fair Labor Standards Amendments of 1961.

1. The quotation of subsection 7(a) of the Fair Labor Standards Act of 1938 is deleted from § 526.1 so that this section as amended will read as follows:

§ 526.1 Statutory provisions.

The provisions of section 7 of the Fair Labor Standards Act of 1938, as amended, providing a seasonal industry exemption from the overtime pay requirements of the Act, are as follows:

SECTION 7. Maximum hours.

(b) No employer shall be deemed to have violated subsection (a) of this section [which prohibits persons from being employed for more than specified numbers of hours without proper overtime compensation] by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed.

(3) For a period or periods of not more than 14 workweeks in the aggregate in any calendar year in an industry found by the Secretary of Labor to be of a seasonal nature, and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

2. The references to forty hours in the introductory paragraph and paragraph (h) of § 548.2 are changed to refer to section 7(a) of the Act so that these paragraphs as amended shall read as follows:

§ 548.2 General conditions.

The requirements of section 7 of the Act with respect to the payment of overtime compensation to an employee for a workweek longer than the applicable number of hours established in section 7(a) of the Act, will be met under the provisions of section 7(f)(3) of the Act by payments which satisfy all the following standards:

(h) The number of hours for which the employee is paid not less than one and one-half times such established basic rate equals or exceeds the number of hours worked by him in any workweek, in excess of the maximum workweek applicable to such employees under subsection 7(a) of the Act.

3. The references to "\$1.00 an hour" and to "40 hours" in § 548.3(e) are changed to refer to "the rates required by section 6(a) and (b) of the Act" and to "the number of hours applicable under section 7(a) of the Act" so that this paragraph as amended shall read as follows:

§ 548.3 Authorized basic rates.

(e) The rate or rates (not less than the rates required by section 6(a) and (b) of the Act) which may be used under the Act to compute overtime compensation of the employee but excluding additional payments in cash or in kind which, if included in the computation of overtime under the Act, would not increase the total compensation of the employee by more than 30 cents a week on the average for all overtime weeks (in excess of the number of hours applicable under section 7(a) of the Act) in the period for which such additional payments are made.

4. The quotation from section 7 of the Fair Labor Standards Act of 1938 in § 548.100(b) is changed to conform to the amendments to section 7 effected by the Fair Labor Standards Amendments of 1961, and the reference to a workweek of forty hours in the language preceding the quotation is deleted, so that § 548.100(b) as amended will read as follows:

§ 548.100 Introductory statement.

(b) Section 7(f) of the Fair Labor Standards Act provides that an employer will comply with the overtime requirements of the Act if—

... pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection [7(a)]—

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Secretary of Labor as being substantially equivalent to the av-

erage hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time; and if (1) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (d) are not less than the minimum hourly rate required by applicable law, and (11) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

5. In view of the fact that all employees now covered by the Fair Labor Standards Act of 1938 are not covered by the same overtime provisions, example 2 under § 548.302(b)(1) is amended to refer specifically to an employee covered by the 40 hour provision of section 7 of the Act. As amended example 2 shall read as follows:

§ 548.302 Average earnings for period other than a workweek.

Example 2. An employee, who normally would come within the forty hour provision of section 7(a) of the Act, is paid a fixed amount of money for the completion of each job. Each job takes 2 or 3 days to complete. Under the employment agreement, the employee is entitled to time and one-half an authorized basic rate for all hours worked in excess of forty in the workweek. The authorized basic rate is the employee's average hourly earnings for each job. Suppose he completes two jobs in a particular workweek and all his overtime hours are on job #2. The employee's average hourly earnings on job #2 may be used to compute his overtime pay.

6. In view of the higher minimum wages now required by the Fair Labor Standards Act, the example under § 548.303(b) is amended to refer to an employee who receives wage rates above the new minimum rates. As amended this example shall read as follows:

§ 548.303 Average earnings for each type of work.

Example. An employee who is paid on a weekly basis with overtime after forty hours works six 8-hour days in a workweek under an agreement or understanding reached pursuant to this subsection. He performs three different types of piecework each at a different rate of pay. The basic rates to be used for computing overtime in this situation would be arrived at by dividing the earnings for each type of work by the number of hours during which that type of work was performed. There would thus be three different basic rates, one for each type of work. Since the overtime hours used in this illustration occur on the sixth day, the types of work performed on the sixth day would determine the basic rate or rates on which overtime would be computed that week. Thus, if the average hourly earnings for the three types of work are respectively \$1.50 an hour in Type A, \$1.60 an hour in type B, and \$1.80 an hour in type C, and on the sixth day the employee works on type B, his overtime premium for the sixth day would be one-half the basic rate of \$1.60 an hour, multiplied by the 8 hours worked on that day.

7. Paragraphs (a), (c), (f), and (g) of § 548.305 are amended as hereinbelow set out. The references in paragraph (a) to "\$1.00" and to "40 hours" are changed to refer to "the rates required by

section 6 (a) and (b) of the Act" and to "the number of hours applicable under section 7(a) of the Act." In view of the fact that all employees now covered by the Fair Labor Standards Act are not covered by the same overtime provisions the examples under paragraphs (c) and (f) are amended to refer specifically to employees covered by the forty hour provision of section 7 of the Act. The reference to "less than \$1.00 an hour" in paragraph (g) is changed to refer to "special minimum rates authorized by wage orders issued pursuant to the Act."

§ 548.305 Excluding certain additions to wages.

(a) Section 548.3(e) authorizes as established basic rates: "The rate or rates (not less than the rates required by section 6 (a) and (b) of the Act) which may be used under the Act to compute overtime compensation of the employee but excluding additional payments in cash or in kind which, if included in the computation of overtime under the Act, would not increase the total compensation of the employee by more than 30 cents a week on the average for all overtime weeks (in excess of the number of hours applicable under section 7(a) of the Act) in the period for which such additional payments are made."

(c) The exclusion of one or more additional payments under § 548.3(e) must not affect the overtime compensation of the employee by more than 30 cents a week on the average for the overtime weeks.

Example. An employee, who normally would come within the forty hour provision of section 7(a) of the Act, is paid a cost-of-living bonus of \$260 each calendar quarter, or \$20 per week. The employee works overtime in only 2 weeks in the 13-week period, and in each of these overtime weeks he works 50 hours. He is therefore entitled to \$2 as overtime compensation on the bonus for each week in which overtime was worked (i.e., \$20 bonus divided by 50 hours equals 40 cents an hour; 10 overtime hours, times one-half, times 40 cents an hour, equals \$2 per week). Since the overtime on the bonus is more than 30 cents on the average for the 2 overtime weeks, this cost-of-living bonus would not be excluded from the overtime computation under § 548.3(e).

(f) In order to determine whether the exclusion of a bonus or other incidental payment would affect the total compensation of the employee by not more than 30 cents a week on the average, a comparison is made between his total compensation computed under the employment agreement and his total compensation computed in accordance with the applicable overtime provisions of the Act.

Example. An employee, who normally would come within the forty hours provision of section 7(a) of the Act, is paid at piece rates and at one and one-half times the applicable piece rates for work performed during hours in excess of forty in the workweek. The employee is also paid a bonus, which when apportioned over the bonus period, amounts to \$2 a week. He never works more

than fifty hours a week. The piece rates could be established as basic rates under the employment agreement and no additional overtime compensation paid on the bonus. The employee's total compensation computed in accordance with the applicable overtime provision of the Act, section 7(f) (1)¹⁵, would be affected by not more than 20 cents in any week by not paying overtime compensation on the bonus.¹⁶

(g) Section 548.3(e) is not applicable to employees employed at subminimum wage rates under learner certificates, or special certificates for handicapped workers, or in the case of employees in Puerto Rico or the Virgin Islands employed at special minimum rates authorized by wage orders issued pursuant to the Act.

8. In view of the fact that all employees now covered by the Fair Labor Standards Act of 1938 are not covered by the same overtime provisions, example 2 under § 548.500 is amended to refer specifically to an employee covered by the forty hour provision of section 7 of the Act. As amended this example shall read as follows:

§ 548.500 Methods of computation.

Example 2. An employee, who normally would come within the forty hour provision of section 7(a) of the Act, has a basic rate which is his monthly salary divided by the number of regular hours of work in the month.¹⁷ If the salary is intended to cover straight-time compensation for a forty hour week he would be entitled to overtime for every hour after forty computed on the basis of one and one-half times the established basic rate, in addition to his monthly salary. If the salary is intended to cover a work-week shorter than forty hours, such as thirty-five hours, he would be entitled to additional straight time at the basic rate for the hours between thirty-five and forty and also to overtime at one and one-half times that rate for all hours worked in excess of forty in a week.

9. The references in § 548.501 to forty hours are changed to refer to section 7(a) of the Act. As amended this section shall read as follows:

§ 548.501 Overtime hours based on non-statutory standards.

Many employees are paid daily overtime pay or Saturday overtime pay or overtime pay on a basis other than the statutory standard of overtime pay required by section 7(a) of the Act. In these cases, the number of hours for which an employee is paid at least one and one-half times an established basic rate must equal or exceed the number of hours worked in excess of the applicable number of hours established in section 7(a) of the Act in the workweek. However, only overtime hours under the employment agreement which also

qualify as overtime hours under section 7(a) (5), (6), or (7) of the Act¹⁸ may be offset against the hours of work in excess of the applicable number of hours established in section 7(a) of the Act.

10. Section 785.1 is amended to refer to the new minimum wage and maximum hour provisions contained in the Fair Labor Standards Amendments of 1961. As amended this section shall read as follows:

§ 785.1 Introductory statement.

Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) requires that each employee, not specifically exempted, who is engaged in commerce, or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce, or in the production of goods for commerce receive a specified minimum wage. Section 7 of the Act (29 U.S.C. 207) provides that persons may not be employed for more than a stated number of hours a week without receiving at least one and one-half times their regular rate of pay for the overtime hours. The amount of money an employee should receive cannot be determined without knowing the number of hours he has worked. This part discusses the principles involved in determining what constitutes working time. It also seeks to apply these principles to situations that frequently arise. It cannot include every possible situation. No inference should be drawn from the fact that a subject or an illustration is omitted. If doubt arises inquiries should be sent to the Administrator of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, Washington 25, D.C., or to any Regional Office of the Divisions. A list of such offices is contained in § 785.51.

11. The reference to "40 hours" in § 785.5 is amended to refer to "a specified number of hours per week." As amended this section shall read as follows:

§ 785.5 General requirements of section 6 and 7 of the Fair Labor Standards Act.

Section 6 requires the payment of a minimum wage by an employer to his employees who are subject to the Act. Section 7 prohibits their employment for more than a specified number of hours per week without proper overtime compensation.

12. Paragraphs (a) and (b) of § 785.49 are amended to incorporate the new bases of coverage contained in the Fair Labor Standards Amendments of 1961. As amended these paragraphs shall read as follows:

§ 785.49 Applicable provisions of the Fair Labor Standards Act.

(a) *Section 6.* Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) requires that each employee, not specifically exempted, who is engaged in commerce, or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce,

or in the production of goods for commerce receive a specified minimum wage.

(b) *Section 7.* Section 7(a) of the Act (29 U.S.C. 207) provides that persons may not be employed for more than a stated number of hours a week without receiving at least one and one-half times their regular rate of pay for the overtime hours.

13. The references to "40 hours" a week in footnote 5 under § 791.2(a) are changed to refer to "the number of hours specified in section 7(a)." As amended this footnote shall read as follows:

§ 791.2 Joint employment.

* * * * *

¹⁵ Both the statutory language (section 3(d) defining "employer" to include anyone acting directly or indirectly in the interest of an employer in relation to an employee) and the Congressional purpose as expressed in section 2 of the Act, require that employees generally should be paid overtime for working more than the number of hours specified in section 7(a), irrespective of the number of employers they have. Of course, an employer should not be held responsible for an employee's action in seeking, independently, additional part-time employment. But where two or more employers stand in the position of "joint employers" and permit or require the employee to work more than the number of hours specified in section 7(a), both the letter and the spirit of the statute require payment of overtime.

(Sec. 7, 52 Stat. 1063; 29 U.S.C. 207; Sec. 6, Pub. Law 87-30)

Signed at Washington, D.C., this 14th day of August 1961.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 61-7933; Filed, Aug. 17, 1961; 8:47 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Animal Feed and Animal-Feed Supplements

EXFOLIATED HYDROBIOTITE

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by the Zonolite Company, 135 South LaSalle Street, Chicago 3, Illinois, and other relevant material, has concluded that the following food additive regulation should issue with respect to exfoliated hydrobiotite as an inert bulking agent in pullet replacement feed. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c) (1), 72 Stat. 1786; 21 U.S.C. 348(c) (1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the food additive regulations (21 CFR Part 121) are amended by adding to Subpart C the following new section:

¹⁵ Section 7(f) (1) of the act provides that overtime compensation may be paid at one and one-half times the applicable piece rate but extra overtime compensation must be properly computed and paid on additional pay required to be included in computing the regular rate.

¹⁶ Bonus of \$2 divided by fifty hours equals 4 cents an hour. Half of this hourly rate multiplied by ten overtime hours equals 20 cents.

¹⁷ See § 548.301.

¹⁸ See § 778.5 (a) through (f) of this chapter.

§ 121.222 Exfoliated hydrobiotite.

The food additive exfoliated hydrobiotite, a thermally expanded magnesium-aluminum-iron silicate, may be safely used in animal feeds when incorporated therein in accordance with the following prescribed conditions:

(a) The food additive contains a minimum of 98 percent of exfoliated hydrobiotite having a bulk density of 6 to 7 pounds per cubic foot.

(b) It is used or intended for use in poultry feed at a level not to exceed 5 percent of the weight of the finished feed as a nonnutritive bulking agent for restricting calorie intake in pullet replacement feeds.

(c) To assure safe use of the additive in animal feed, the label of the additive container or that of any intermediate premix shall bear, in addition to the other information required by the act, the following:

(1) The name of the additive, exfoliated hydrobiotite, or in lieu thereof the proposed common name "verxite," followed by "exfoliated hydrobiotite" in parentheses.

(2) A statement of the concentration of the additive contained in any intermediate premix.

(3) Adequate mixing directions to provide a final feed containing the proper concentration of the additive, whether or not intermediate premixes are also used.

(4) Adequate use directions to provide a finished feed labeled as provided in paragraph (d) of this section.

(5) A statement that the additive is to be used in pullet replacement feed only.

(d) To assure safe use of the additive, the label of the finished feed shall bear, in addition to the other information required by the act, the following:

(1) The name of the additive, exfoliated hydrobiotite, or in lieu thereof, the proposed common name "verxite," followed by "exfoliated hydrobiotite" in parentheses, either of which to be followed by the statement "a nonnutritive bulking agent."

(2) A statement that the feed is to be used only as pullet replacement feed.

(3) A statement of the concentration of the additive contained therein.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum

or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: August 14, 1961.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 61-7926; Filed, Aug. 17, 1961; 8:46 a.m.]

PART 121—FOOD ADDITIVES**Subpart D—Food Additives Permitted in Food for Human Consumption****POLYSORBATE 60 (POLYOXYETHYLENE (20) SORBITAN MONOSTEARATE)**

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 378) filed by Atlas Chemical Industries, Inc., Wilmington 99, Delaware, and other relevant material, has concluded that the following amendment to § 121.1030 should issue with respect to the food additive polysorbate 60 (polyoxyethylene (20) sorbitan monostearate) in sugar-type confection coatings. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), § 121.1030(c) (21 CFR 121.1030; 26 F.R. 4739, 6240) is amended by adding thereto the following new subparagraph (6), reading as follows:

§ 121.1030 Polysorbate 60 (polyoxyethylene (20) sorbitan monostearate).

* * *

(c) * * *

(6) To impart greater opacity to sugar-type confection coatings whereby the maximum amount of the additive does not exceed 0.2 percent of the weight of the finished sugar coating.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: August 14, 1961.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 61-7927; Filed, Aug. 17, 1961; 8:46 a.m.]

SUBCHAPTER C—DRUGS**PART 141a—PENICILLIN AND PENICILLIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY****PART 146—GENERAL REGULATIONS FOR CERTIFICATION OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS****PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS****Order Changing Name of Potassium Penicillin 152 to Phenethicillin Potassium**

Pursuant to a notice published in the FEDERAL REGISTER of June 3, 1961 (26 F.R. 4950), one objection was received which, while in reference to another penicillin compound, pointed up the possibility of confusion if the name "phenethicillin" were adopted as proposed. Based on this and other relevant material, which has come to his attention since publication of the proposed order, the Commissioner of Food and Drugs has concluded that the name of the drug should be "phenethicillin potassium." Therefore, the following amendments are ordered, pursuant to section 507 of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357):

The name "potassium penicillin 152" is changed to read "phenethicillin potassium" wherever it occurs in Parts 141a, 146, and 146a of this chapter:

- Section 141a.100, section heading.
- Section 141a.100(a), formula.
- Section 141a.100(c), paragraph heading and formula.
- Section 141a.101, section heading.
- Section 141a.101(a), last sentence.
- Section 141a.102(a), section heading.
- Section 146.1(c)(1)(i), second sentence.
- Section 146a.16, section heading.
- Section 146a.16(a), introduction to paragraph, first and second sentences.
- Section 146a.16(d)(1), second sentence.
- Section 146a.17, section heading.
- Section 146a.17(a), first and fourth sentences.
- Section 146a.17(b), first sentence.
- Section 146a.17(c), introduction to paragraph.
- Section 146a.17(c)(1)(iv).
- Section 146a.17(c)(3) (two places).
- Section 146a.17(d)(1) (two places).
- Section 146a.17(d)(2)(ii) (two places).
- Section 146a.17(d)(3)(ii).
- Section 146a.18, section heading.
- Section 146a.18(a), first and third sentences.