

In short, it was the intent of Congress to exempt very seasonal recreational businesses from sections 6 and 7 of the act when section 13(a)(3) was enacted in 1966. Although conceivably, some marine dealers could qualify under this exemption, which covers them in intent if not in fact, few do qualify by its explicit terms.

Even more pertinent to the bill presently under consideration, and again illustrative of legislative intent, is section 13(b)(10) which exempts from section 7 (maximum hours):

Any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft, if employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers * * *

The reason for exempting these vehicle dealers from the maximum hour provisions (overtime) of the act is the very seasonal nature of the business. For example, the Chicago Automobile Dealers Association states that 60 percent of sales are in the spring of the year and 25 percent are in the fall with the remaining 15 percent spread over the winter and summer seasons. This means that a great amount of overtime would be paid during the peak season—supplementing sales commissions—and creating a substantial burden on the dealer.

The dealer would be inclined, indeed forced, to put his salesmen on straight commission during peak periods, or alternately, to employ only part-time salesmen. From the employee's standpoint this would impair both his assured minimum earnings and maximum working hours.

Congress recognized that the application of section 7 to vehicle dealers would impose a burden on them, requiring economic adjustments that would be self-defeating insofar as the employees were concerned and passed the amendment that is section 13(b)(10).

It is our opinion through technical oversight, marine dealers were excluded from the exemptions of section 13(b)(10) in 1966. We were hopeful that the Department of Labor might administratively provide an exemption for marine dealers as a result of their similarity to the vehicle dealers excluded by section 13(b)(10). However, the Secretary of Labor, when asked for an informal opinion on this matter, responded that marine dealers could not be included under present law. We submit that the economic situation of marine dealers is exactly similar to that of the vehicle dealers exempted by section 13(b)(10) and that marine dealers should be included in this exemption as now proposed by H.R. 13192.

The marine dealers' business is as seasonal as the automotive dealers' with 75 percent of all sales during the 6-month period of March through August. (Source: BIA Market Research Department.) An immense amount of overtime wages would be paid during the summer boating season under section 7, particularly since most marine dealers are open 7 days a week during the summer. If the dealer runs a marine or mooring area, 12-hour days are not uncommon on weekends because that's when boaters go boating. Under these circumstances it would not be uncommon for overtime wages during the summer to exceed straight time wages if section 7 were to apply. The marine dealer would be forced, like the automotive dealer, to restructure his employment policies to the detriment of the employees.

As the Fair Labor Standards Act is presently enacted, many marine dealers are now within its scope inasmuch as their gross sales exceed