

§ 780.10

ascertaining the intended scope and application of an exemption whose effect might otherwise not be clear (*Addison v. Holly Hill*, 322 U.S. 607; *Maneja v. Waiialua*, 349 U.S. 254; *Bowie v. Gonzales* (C.A. 1), 117 F. 2d 11). In the interpretations of the several exemptions discussed in the various subparts of this part 780, effect has been given to these principles and each exemption has been considered in its relation to others in the group as well as to the combined effect of the group as a whole.

§ 780.10 Workweek standard in applying exemptions.

The workweek is the unit of time to be taken as the standard in determining the applicability of an exemption. An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week. If in any workweek an employee does only exempt work, he is exempt from the wage and hour provisions of the Act during that workweek, irrespective of the nature of his work in any other workweek or workweeks. An employee may thus be exempt in 1 workweek and not in the next. But the burden of effecting segregation between exempt and nonexempt work as between particular workweeks is upon the employer.

§ 780.11 Exempt and nonexempt work during the same workweek.

Where an employee in the same workweek performs work which is exempt under one section of the Act and also engages in work to which the Act applies but is not exempt under some other section of the Act, he is not exempt that week, and the wage and hour requirements of the Act are applicable (see *Mitchell v. Hunt*, 263 F. 2d 913; *Mitchell v. Maxfield*, 12 WH Cases 792 (S.D. Ohio), 29 Labor Cases 69, 781; *Jordan v. Stark Bros. Nurseries*, 45 F. Supp. 769; *McComb v. Puerto Rico Tobacco Marketing Co-op Ass'n*, 80 F. Supp. 953, affirmed 181 F. 2d 697; *Walling v. Peacock Corp.*, 58 F. Supp. 880-883). On the other hand, an employee who performs exempt activities during a workweek will not lose the exemption by virtue of the fact that he performs other activities outside the scope of the exemption if

29 CFR Ch. V (7-1-06 Edition)

the other activities are not covered by the Act.

§ 780.12 Work exempt under another section of the Act.

The combination (tacking) of exempt work under one exemption with exempt work under another exemption is permitted. For instance, the overtime pay requirements are not considered applicable to an employee who does work within section 13(b)(12) for only part of a workweek if all of the covered work done by him during the remainder of the workweek is within one or more equivalent exemptions under other provisions of the Act. If the scope of such exemptions is not the same, however, the exemption applicable to the employee is equivalent to that provided by whichever exemption provision is more limited in scope. For instance, an employee who devotes part of a workweek to work within section 13(b)(12) and the remainder to work exempt under section 7(c) must receive the minimum wage and must be paid time and one-half for his overtime work during that week for hours over 10 a day or 50 a week, whichever provides the greater compensation. Each activity is tested separately under the applicable exemption as though it were the sole activity of the employee for the whole workweek in question. The availability of a combination exemption depends on whether the employee meets all the requirements of each exemption which is sought to combine.

Subpart B—General Scope of Agriculture

INTRODUCTORY

§ 780.100 Scope and significance of interpretative bulletin.

Subpart A of this part 780, this subpart B and subparts C, D, and E of this part together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of sections 3(f), 13(a)(6), and 13(b)(12) of the Fair Labor Standards Act of 1938, as amended. Section 3(f) defines "agriculture" as the term is used in the Act. Section 13(a)(6) provides exemption from the

Wage and Hour Division, Labor

§ 780.104

minimum wage and overtime pay provisions of the Act for certain employees employed in "agriculture," as so defined. Section 13(b)(12) provides an overtime exemption for any employee employed in agriculture. As appears more fully in subpart A of this part 780, interpretations in this bulletin with respect to the provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act.

§ 780.101 Matters discussed in this subpart.

Section 3(f) defines "agriculture" as this term is used in the Act. Those principles and rules which govern the interpretation of the meaning and application of the Act's definition of "agriculture" in section 3(f) and of the terms used in it are set forth in this subpart B. Included is a discussion of the application of the definition in section 3(f) to the employees of farmers' cooperative associations. In addition, the official interpretations of section 3(f) of the Act and the terms which appear in it are to be taken into consideration in determining the meaning intended by the use of like terms in particular related exemptions which are provided by the Act.

§ 780.102 Pay requirements for agricultural employees.

Section 6(a)(5) of the Act provides that any employee employed in agriculture must be paid at least \$1.30 an hour beginning February 1, 1969. However, there are certain exemptions provided in the Act for agricultural workers, as previously mentioned. (See §§ 780.3 and 780.4.)

§ 780.103 "Agriculture" as defined by the Act.

Section 3(f) of the Act defines "agriculture" as follows:

"Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing

Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

§ 780.104 How modern specialization affects the scope of agriculture.

The effect of modern specialization on agriculture has been discussed by the U.S. Supreme Court as follows:

Whether a particular type of activity is agricultural depends, in large measure, upon the way in which that activity is organized in a particular society. The determination cannot be made in the abstract. In less advanced societies the agricultural function includes many types of activity which, in others, are not agricultural. The fashioning of tools, the provision of fertilizer, the processing of the product, to mention only a few examples, are functions which, in some societies, are performed on the farm by farmers as part of their normal agricultural routine. Economic progress, however, is characterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. In this way functions which are necessary to the total economic process of supplying an agricultural produce become, in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it. Thus the question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity. The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. But the maintenance man in a powerplant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done by farmers. The production of power and the manufacture of fertilizer are independent productive functions, not agriculture (see *Farmers Reservoir Co. v.*