

§ 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; *Wallig 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

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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