

## Wage and Hour Division, Labor

## § 780.9

### § 780.7 Reliance on interpretations.

The interpretations of the law contained in this part are official interpretations which may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947. In addition, the Supreme Court has recognized that such interpretations of this Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." Further, as stated by the Court: "Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons." (*Skidmore v. Swift*, 323 U.S. 134). Some of the interpretations in this part are interpretations of exemption provisions as they appeared in the original Act before amendment in 1949, 1961, and 1966, which have remained unchanged because they are consistent with the amendments. These interpretations may be said to have congressional sanction because "When Congress amended the Act in 1949 it provided that pre-1949 rulings and interpretations by the Administrator should remain in effect unless inconsistent with the statute as amended. 63 Stat. 920." (*Mitchell v. Kentucky Finance Co.*, 359 U.S. 290; accord, *Maneja v. Waiialua*, 349 U.S. 254.)

### § 780.8 Interpretations made, continued, and superseded by this part.

On and after publication of this part 780 in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded, or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as this part 780. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended by the Fair Labor Standards Amendments of 1966 are continued in

effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequently arise. They do not and cannot refer specifically to every problem which may be met in the consideration of the exemptions discussed. The omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy. Questions on matters not fully covered by this bulletin may be addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, or to any Regional Office of the Division.

### § 780.9 Related exemptions are interpreted together.

The interpretations contained in the several subparts of this part 780 consider separately a number of exemptions which affect employees who perform activities in or connected with agriculture and its products. These exemptions deal with related subject matter and varying degrees of relationships between them were the subject of consideration in Congress before their enactment. Together they constitute an expression in some detail of existing Federal policy on the lines to be drawn in the industries connected with agriculture and agricultural products between those employees to whom the pay provisions of the Act are to be applied and those whose exclusion in whole or in part from the Act's requirements has been deemed justified. The courts have indicated that these exemptions, because of their relationship to one another, should be construed together insofar as possible so that they form a consistent whole. Consideration of the language and history of a related exemption or exemptions is helpful in

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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

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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