§ 783.48

Its passengers, crew, or cargo or for participation in life boat or fire drills will not render such off-duty periods, excluded by employment agreement applicable to the employee, "hours worked". Responding to such calls, however, as well as the performance of work in response thereto constitute compensable work time. For further and more detailed discussion on what generally are regarded as "hours worked" under the Act, see part 785 of this chapter.

APPLICATION OF THE EXEMPTIONS

§ 783.48 Factors determining application of exemptions.

The application of the exemptions provided by section 13(a)(14) and section 13(b)(6) of the Act is determined in accordance with their language and scope as explained in §§783.24, 783.25, and 783.27, with regard to the principles set forth in §783.20 and the legislative history and judicial construction outlined in §§783.28 through 783.30. Whether a particular employee is exempt depends on what he does, as explained in §§783.31 through 783.37. Whether he is exempt from the overtime pay provisions only or from minimum wages as well depends on whether his employment is or is not on an American vessel, which is determined as indicated in §§783.38 through 783.42. In addition, sections 13(a)(14) and 13(b)(6), like other exemptions in the Act, apply on a workweek basis as mentioned in §783.43 and explained in §§783.49 and 783.50.

§ 783.49 Workweek unit in applying the exemptions.

The unit of time to be used in determining the application of the exemption provided by section 13(b)(6) or 13(a)(14) to an employee is the workweek. (See Overnight Transportation Co. v. Missel, 316 U.S. 572; Sternewald Dredging Co. v. Walling, 158 F. 2d 678.) This is the period used in determining whether a substantial amount of non-seaman’s work has been performed so as to make the exemption inapplicable. See §783.37. A workweek is a fixed and regularly recurring interval of 7 consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing of the workweek for the purpose of escaping the requirements of the Act is not permitted.

§ 783.50 Work exempt under another section of the Act.

Where an employee performs work during his workweek, some of which is exempt under one section of the Act, and the remainder of which is exempt under another section or sections of the Act, the exemptions may be combined. The employee’s combination exemption is controlled in such case by that exemption which is narrower in scope. For example, if part of his work is exempt from both minimum wage and overtime compensation under one section of the Act, and the rest is exempt only from the overtime pay requirements under section 13(b)(6), the employee is exempt that week from the overtime pay provisions but not from the minimum wage requirements.

§ 783.51 Seamen on a fishing vessel.

In extending the minimum wage to seamen on American vessels by limiting the exemption from minimum wages and overtime provided by section 13(a)(14) of the Act to “any employee employed as a seaman on a vessel other than an American vessel,” and at the same time extending the minimum wage to “onshore” but not “offshore” operations concerned with aquatic products, the Congress, in the 1961 Amendments to the Act, did not indicate any intent to remove the crews of fishing vessels engaged in operations named in section 13(a)(5) from the exemption provided by that section. The exemption provided by section 13(a)(14), and the general exemption in section 13(b)(6) from overtime for “any employee employed as a seaman” (whether or not on an American vessel) apply, in general, to employees, working aboard vessels, whose services are rendered primarily as an aid to navigation (§§783.31–783.37). It appears, however, that it is not the custom or practice in the fishing industry for a
Wage and Hour Division, Labor

fishing vessel to have two crews; namely, a fishing crew whose duty it is primarily to fish and to perform other duties incidental thereto and a navigational crew whose duty it is primarily to operate the boat. Where, as is the typical situation, there is but one crew which performs all these functions, the section 13(a)(5) exemption from both the minimum wage and the overtime provisions would apply to its members. For a further explanation of the fishery exemption see part 784 of this chapter.

PART 784—PROVISIONS OF THE FAIR LABOR STANDARDS ACT APPLICABLE TO FISHING AND OPERATIONS ON AQUATIC PRODUCTS

Subpart A—General

INTRODUCTORY

Sec.
784.0 Purpose.
784.1 General scope of the Act.
784.2 Matters discussed in this part.
784.3 Matters discussed in other interpretations.
784.4 Significance of official interpretations.
784.5 Basic support for interpretations.
784.6 Interpretations made, continued, and superseded by this part.

SOME BASIC DEFINITIONS

784.7 Definition of terms used in the Act.
784.8 "Employer," "employee," and "employee.
784.9 "Person."
784.10 "Enterprise."
784.11 "Establishment."
784.12 "Commerce."
784.13 "Production."
784.14 "Goods."
784.15 "State."
784.16 "Regular rate."

APPLICATION OF COVERAGE AND EXEMPTIONS PROVISIONS OF THE ACT

784.17 Basic coverage in general.
784.18 Commerce activities of employees.
784.19 Commerce activities of enterprise in which employee is employed.
784.20 Exemptions from the Act's provisions.
784.21 Guiding principles for applying coverage and exemption provisions.

Subpart B—Exemptions Provisions Relating to Fishing and Aquatic Products

THE STATUTORY PROVISIONS

784.100 The section 13(a)(5) exemption.
784.101 The section 13(b)(4) exemption.

LEGISLATIVE HISTORY OF EXEMPTIONS

784.102 General legislative history.
784.103 Adoption of the exemption in the original 1938 Act.
784.104 The 1949 amendments.
784.105 The 1961 amendments.

PRINCIPLES APPLICABLE TO THE TWO EXEMPTIONS

784.106 Relationship of employee's work to the named operations.
784.107 Relationship of employee's work to operations on the specified aquatic products.
784.108 Operations not included in named operations on forms of aquatic "life."
784.109 Manufacture of supplies for named operations is not exempt.
784.110 Performing operations both on nonaquatic products and named aquatic products.
784.111 Operations on named products with substantial amounts of other ingredients are not exempt.
784.112 Substantial amounts of nonaquatic products; enforcement policy.
784.113 Work related to named operations performed in off- or dead-season.
784.114 Application of exemptions on a workweek basis.
784.115 Exempt and noncovered work performed during the workweek.
784.116 Exempt and nonexempt work in the same workweek.
784.117 Combinations of exempt work.

GENERAL CHARACTER AND SCOPE OF THE SECTION 13(a)(5) EXEMPTION

784.118 The exemption is intended for work affected by natural factors.
784.119 Effect of natural factors on named operations.
784.120 Application of exemption to "offshore" activities in general.
784.121 Exempt fisheries operations.
784.122 Operations performed as an integrated part of fishing.
784.123 Operations performed on fishing equipment.
784.124 Going to and returning from work.
784.125 Loading and unloading.
784.126 Operation of the fishing vessel.
784.127 Office and clerical employees under section 13(a)(5).

FIRST PROCESSING, CANNING, OR PACKING OF MARINE PRODUCTS UNDER SECTION 13(a)(5)

784.128 Requirements for exemption of first processing, etc., at sea.