

## Wage and Hour Division, Labor

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time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

(c) For the purposes of paragraph (b) of this section, an activity shall be considered as compensable, under such contract provision or such custom or practice only when it is engaged in during the portion of the day with respect to which it is so made compensable.

(d) In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended, of the Walsh-Healey Act, or of the Davis-Bacon Act, in determining the time for which an employer employs an employee with respect to walking, riding, traveling, or other preliminary or postliminary activities described in paragraph (a) of this section, there shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of paragraphs (b) and (c) of this section.

[26 FR 190, Jan. 11, 1961, as amended at 76 FR 18860, Apr. 5, 2011]

### PART 786—MISCELLANEOUS EXEMPTIONS AND EXCLUSIONS FROM COVERAGE

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AUTHORITY: 52 Stat. 1060, as amended; 29 U.S.C. 201–219. Pub. L. 104–188, 100 Stat. 1755. Pub. L. 105–221, 112 Stat. 1248, 29 U.S.C. 203(e).

#### Subpart A—Carriers by Air

##### § 786.1 Enforcement policy concerning performance of nonexempt work.

The Division has taken the position that the exemption provided by section 13(b)(3) of the Fair Labor Standards Act of 1938, as amended, will be deemed applicable even though some nonexempt work (that is, work of a nature other than that which characterizes the exemption) is performed by the employee during the workweek, unless the amount of such nonexempt work is substantial. For enforcement purposes, the amount of nonexempt work will be considered substantial if it occupies more than 20 percent of the time worked by the employed during the workweek.

[21 FR 5056, July 7, 1956]

#### Subpart B [Reserved]

#### Subpart C—Switchboard Operator Exemption

##### § 786.100 Enforcement policy concerning performance of nonexempt work.

The Division has taken the position that the exemption provided by section 13(a)(10) of the Fair Labor Standards Act will be deemed applicable even though some nonexempt work (that is, work of a nature other than that which characterizes the exemption) is performed by the employee during the workweek, unless the amount of such nonexempt work is substantial. For enforcement purposes, the amount of nonexempt work will be considered substantial if it occupies more than 20

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percent of the time worked by the employee during the workweek.

[32 FR 15426, Nov. 4, 1967]

### **Subpart D—Employers Subject to Part 1 of Interstate Commerce Act**

#### **§ 786.150 Enforcement policy concerning performance of nonexempt work.**

The Division has taken the position that the exemption provided by section 13(b)(2) of the Fair Labor Standards Act will be deemed applicable even though some nonexempt work (that is, work of a nature other than that which characterizes the exemption) is performed by the employee during the workweek, unless the amount of such nonexempt work is substantial. For enforcement purposes, the amount of nonexempt work will be considered substantial if it occupies more than 20 percent of the time worked by the employee during the workweek.

[13 FR 1377, Mar. 17, 1948]

### **Subpart E—Taxicab Operators**

#### **§ 786.200 Enforcement policy concerning performance of nonexempt work.**

The Division has taken the position that the exemption provided by section 13(b)(17) of the Fair Labor Standards Act will be deemed applicable even though some nonexempt work (that is, work of a nature other than that which characterizes the exemption) is performed by the employee during the workweek, unless the amount of such nonexempt work is substantial. For enforcement purposes, the amount of nonexempt work will be considered substantial if it occupies more than 20 percent of the time worked by the employee during the workweek.

[32 FR 15426, Nov. 4, 1967]

### **Subpart F—Newspaper Publishing**

#### **§ 786.250 Enforcement policy.**

The exemption provided by paragraph 13(a)(8) of the Fair Labor Standards Act of 1938 applies to “any employee employed in connection with the publication of any weekly, semi-

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weekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto.” For the purpose of enforcement, it is the Divisions’ position that such an employee is within the exemption even though he is also engaged in job printing activities. If less than 50 percent of the employee’s worktime during the workweek is spent in job printing work, some of which is subject to the Act. If none of the job printing activities are within the general coverage of the Act, the exemption applies even if the job printing activities equal or exceed 50 percent of the employee’s worktime. However, this exemption is not applicable if the employee spends 50 percent or more of his worktime in a workweek on job printing, any portion of which is within the general coverage of the Act on an individual or enterprise basis.

[32 FR 15426, Nov. 4, 1967]

### **Subpart G—Youth Opportunity Wage**

#### **§ 786.300 Application of the youth opportunity wage.**

Section 6(g) of the Fair Labor Standards Act allows any employer to pay any employee who has not attained the age of 20 years a wage of not less than \$4.25 an hour during the first 90 consecutive calendar days after such employee is initially employed by such employer. For the purposes of hiring workers at this wage, no employer may take any action to displace employees, including partial displacements such as reducing hours, wages, or employment benefits. Any employer that violates these provisions is considered to have violated section 15(a)(3) of the Act.

[76 FR 18860, Apr. 5, 2011]

### **Subpart H—Volunteers at Private Non-Profit Food Banks**

#### **§ 786.350 Exclusion from definition of “employee” of volunteers at private non-profit food banks.**

Section 3(e)(5) of the Fair Labor Standards Act excludes from the definition of the term “employee” individuals who volunteer their services solely

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for humanitarian purposes at private non-profit food banks and who receive groceries from the food banks.

[76 FR 18860, Apr. 5, 2011]

### **PART 788—FORESTRY OR LOGGING OPERATIONS IN WHICH NOT MORE THAN EIGHT EMPLOYEES ARE EMPLOYED**

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AUTHORITY: Secs. 1-19, 52 Stat. 1060, as amended; 29 U.S.C. 201-219.

SOURCE: 34 FR 15794, Oct. 14, 1969, unless otherwise noted.

#### **§ 788.1 Statutory provisions.**

Section 13(a)(13) of the Fair Labor Standards Act of 1938, as amended, provides an exemption from the minimum wage and overtime requirements of the Act, as follows:

The provisions of sections 6 and 7 shall not apply with respect to \* \* \* any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.

This exemption, formerly section 13(a)(15) of the Act, was amended by the Fair Labor Standards Amendments of 1966 (80 Stat. 830) to change the number of employees limitation from 12 to eight, and to redesignate it as section 13(a)(13).

#### **§ 788.2 Matters not discussed in this part.**

The exemption in section 13(a)(13) of the Act need not be considered unless the employee is "engaged in commerce or the production of goods for commerce" or is employed in an "enterprise engaged in commerce or in the production of goods for commerce," as those words are defined in the Act, so as to come within the general scope of sections 6 and 7. The principles of coverage are discussed in part 776 of this chapter and the discussion will not be repeated in this part. Neither does this part discuss the exemptions provided in section 13(a)(6) and 13(b)(12), or section 3(f) which includes in the definition of agriculture forestry or lumbering operations performed by a farmer or on a farm as an incident to or in conjunction with certain farming operations. (See part 780 of this chapter.)

#### **§ 788.3 Purpose of this part.**

The purpose of this part is to make available in one place the views of the Department of Labor with respect to the application and meaning of the provisions of section 13(a)(13) of the Act which will provide "a practical guide to employers and employees as to how the office representing the public interest in enforcement of the law will seek to apply it" (*Skidmore v. Swift & Co.*, 324 U.S. 134).

#### **§ 788.4 Significance of official interpretations.**

The interpretations contained in this part indicate, with respect to section 13(a)(13) of the Act which refers to small forestry or lumbering operations, the construction of the law which the Secretary of Labor and the Administrator believes to be correct and which will guide them in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts