

§ 793.20

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. The workweek may not be changed for the purpose of evading the requirements of the Act.

§ 793.20 Exclusive engagement in exempt work.

An employee who engages exclusively in a workweek in work which is exempt under section 13(b)(9) is exempt from the Act's overtime requirements for the entire week.

§ 793.21 Exempt and nonexempt work.

Where an employee in the same workweek performs work which is exempt from the overtime requirements of the Act under section 13(b)(9), and also engages in work to which the overtime requirements apply, he is not exempt from overtime provisions of the Act in that week. (See *McComb v. Puerto Rico Tobacco Marketing Co-op Ass'n.*, 80 F. Supp. 953, affirmed, 181 F. 2d 697; *Mitchell v. Hunt*, 263 F. 2d 913; *Abram v. San Joaquin Cotton Oil Co.*, 46 F. Supp. 969; *McComb v. del Valle*, 80 F. Supp. 945; *Walling v. Peacock Corp.*, 58 F. Supp. 880.) As explained in §793.13, work which does not come within the occupational duties of an announcer, news editor, or chief engineer, or which is not related and incidental thereto, is not exempt work under section 13(b)(9). The mere isolated or occasional performance of insubstantial amounts of such nonexempt work will not defeat the exemption for the employee. Where, however, an employee, in a particular workweek, performs a substantial amount of nonexempt work to which the overtime provisions of the Act are applicable, the employee is not exempt under section 13(b)(9) in that workweek. For administrative purposes an employee who spends 20 percent or more of the hours he works in a workweek in such nonexempt work, will not be considered exempt under section 13(b)(9) in that workweek.

29 CFR Ch. V (7-1-04 Edition)

PART 794—PARTIAL OVERTIME EXEMPTION FOR EMPLOYEES OF WHOLESALE OR BULK PETROLEUM DISTRIBUTORS UNDER SECTION 7(b)(3) OF THE FAIR LABOR STANDARDS ACT

Subpart A—General

- Sec.
- 794.1 General scope of the Act.
- 794.2 Purpose of this part.
- 794.3 Matters discussed in this part.
- 794.4 Significance of official interpretations.
- 794.5 Basic support for interpretations.
- 794.6 Reliance on interpretations.
- 794.7 Interpretations made, continued, and superseded by this part.

Subpart B—Exemption From Overtime Pay Requirements Under Section 7(b)(3) of the Act

SCOPE AND APPLICATION IN GENERAL

- 794.100 The statutory provision.
- 794.101 Intended scope of exemption.
- 794.102 Guides for construing exemptions.
- 794.103 Dependence of exemption on engagement in described distribution.
- 794.104 Enterprises engaged in described distribution and in other activities.
- 794.105 Other requirements for exemption.

THE "ENTERPRISE"

- 794.106 Statutory definition of "enterprise."
- 794.107 "Establishment" distinguished.
- 794.108 Scope of enterprise must be known before exemption tests can be applied.
- 794.109 Statutory basis for inclusion of activities in enterprise.
- 794.110 Activities excluded from the enterprise by the statute.
- 794.111 General characteristics of the statutory enterprise.

"INDEPENDENTLY OWNED AND CONTROLLED LOCAL ENTERPRISE"

- 794.112 Only independent and local enterprises qualify for exemption.
- 794.113 The enterprise must be "local."
- 794.114 The enterprise must be "independently owned and controlled."
- 794.115 "Independently owned."
- 794.116 "Independently * * * controlled."
- 794.117 Effect of franchises and other arrangements.
- 794.118 Effect of unrelated activities.

ANNUAL GROSS VOLUME OF SALES

- 794.119 Dependence of exemption on sales volume of the enterprise.
- 794.120 Meaning of "annual gross volume of sales."