

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON

May 23, 1941

LEGAL FIELD LETTER

No. 56

SUBJECT: Applicability of Section 13(b) (1) or  
13(b) (2) Where Employees Perform a  
Substantial Amount of Nonexempt Work

Various letters and memoranda from the regional offices have recently raised several questions as to the applicability of the exemptions contained in sections 13(b) (1) and 13(b) (2) where the employee performs both exempt and nonexempt work during the same workweek. We are setting forth below the position that the Wage and Hour Division will adopt in this type of situation.

Neither of these exemptions is applicable to an employee during any workweek in which he engages in any substantial amount of nonexempt work in addition to the work which might otherwise bring him within the scope of either of these exemptions.

For example, an employee who drives a truck transporting property in interstate commerce during part of a workweek and also spends a substantial part of his time producing goods for commerce or acting as a bookkeeper is not within the exemption contained in section 13(b) (1). Similarly, if a railroad employee devotes a substantial part of his time in a workweek to working in a warehouse operated by the railroad and if such warehouse operations are not of the type which subject the employer to Part I of the Interstate Commerce Act, the section 13(b) (2) exemption is inapplicable to that employee. (Note that if the warehouse stores goods not carried over the owner railroads' lines in addition to goods carried over the owner railroads' lines and such storage constitutes a substantial portion of the warehouse business, the section 13(b) (2) exemption does not apply to the warehouse employees.)

The reason for our position, as above outlined, is that, in our opinion, Congress intended to exempt employees of motor carriers performing work which affects safety of operation and employees of a railroad performing work which subjects their employer to Part I of the Interstate Commerce Act. Congress did not intend that either of these exemptions should be available as a vehicle to exempt employees who engage in a substantial amount of work other than that which forms the basis of the exemption. Such employees who work more than 40 hours in a workweek must receive overtime compensation notwithstanding the fact that the Interstate Commerce Commission may place an upper limit on the number of hours that they may work in a workweek.

"A substantial amount of nonexempt work" as used in this connection will be regarded by the Division as meaning any amount of work in excess of 20 percent of the total number of hours worked by the particular employee within a particular workweek.