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## 29 C.F.R. § 784.114

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### Application of exemptions on a workweek basis.

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The general rule that the unit of time to be used in determining the application of the exemption to an employee is the workweek (see *Overnight Motor Transportation Co. v. Missel*, 316 U.S. 572; *Mitchell v. Stinson*, 217 F. 2d 210; *Mitchell v. Hunt*, 263 F. 2d 913; *Puerto Rico Tobacco Marketing Co-op. Ass'n. v. McComb*, 181 F. 2d 697). Thus, the workweek is the unit of time to be taken as the standard in determining the applicability to an employee of section 13(a)(5) or section 13(b)(4) (*Mitchell v. Stinson*, supra). An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It may begin at an 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 the workweek for the purpose of escaping the requirements of the Act is not permitted. If in any workweek an employee does only exempt work he is exempt from the wage and hours 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 one workweek and not the next (see *Mitchell v. Stinson*, supra). But the burden of effecting segregation between exempt and nonexempt work as between particular workweeks is on the employer (see *Tobin v. Blue Channel Corp.*, 198 F. 2d 245).

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