
29 C.F.R. § 790.17

“Administrative regulation, order, ruling, approval, or interpretation.”

- (a) Administrative regulations, orders, rulings, approvals, and interpretations are all grouped together in sections 9 and 10, with no distinction being made in regard to their function under the “good faith” defense. Accordingly, no useful purpose would be served by an attempt to precisely define and distinguish each term from the others, especially since some of these terms are often employed interchangeably as having the same meaning.
- (b) The terms “regulation” and “order” are variously used to connote the great variety of authoritative rules issued pursuant to statute by an administrative agency, which have the binding effect of law, unless set aside upon judicial review as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. ^[1]
- (c) The term “interpretation” has been used to describe a statement “ordinarily of an advisory character, indicating merely the agency's present belief concerning the meaning of applicable statutory language.” ^[2] This would include bulletins, releases, and other statements issued by an agency which indicate its interpretation of the provisions of a statute.
- (d) The term “ruling” commonly refers to an interpretation made by an agency “as a consequence of individual requests for rulings upon particular questions.” ^[3] Opinion letters of an agency expressing opinions as to the application of the law to particular facts presented by specific inquiries fall within this description.
- (e) The term “approval” includes the granting of licenses, permits, certificates or other forms of permission by an agency, pursuant to statutory authority. ^[4]
- (f) The terms “administrative regulation order, ruling, approval, or interpretation” connote affirmative action on the part of an agency. ^[5] A failure to act or a failure to reply to an inquiry on the part of an administrative agency is not a “regulation, order, ruling, approval, or interpretation” within the meaning of sections 9 and 10. ^[6] Thus, suppose that an employer writes a letter to the Administrator of the Wage and Hour Division, setting forth the facts concerning his business. He goes on to state in his letter that he believes his employees are not covered by the Fair Labor Standards Act, and that unless he hears to the contrary from the Administrator, he will not pay them in accordance with its provisions. When the employer does not receive a reply to his letter within what he regards as a reasonable time, he assumes that the Administrator agrees with his (the employer's) interpretation of the Act and he acts accordingly. The employer's reliance under such circumstances is not a reliance upon an administrative regulation, order, ruling, approval or interpretation, within the meaning of sections 9 and 10.

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