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29 C.F.R. § 790.19

"Agency of the United States."

(a) In order to provide a defense under section 9 or section 10 of the Portal Act, the regulation, order, ruling, approval, interpretation, administrative practice or enforcement policy relied upon and conformed with must be that of an "agency of the United States." Insofar as acts or omissions occurring on or after May 14, 1947 are concerned, it must be that of the "agency of the United States specified in" section 10(b), which, in the case of the Fair Labor Standards Act, is "the Administrator of the Wage and House Division of the Department of Labor." However, with respect to acts or omissions occurring prior to May 14, 1947, section 9 of the Act permits the employer to show that he relied upon and conformed with a regulation, order, ruling, approval, interpretation, administrative practice or enforcement policy of "any agency of the United States." [1]

(b) The Portal Act contains no comprehensive definition of "agency" as used in sections 9 and 10, but an indication of the meaning intended by Congress may be found in section 10. In that section, where the "agency" whose regulation, order, ruling, approval, interpretation, administrative practice or enforcement policy may be relied on is confined to "the agency of the United States" specified in the section, the Act expressly limits the meaning of the term to the official or officials actually vested with final authority under the statutes involved. [2] Similarly, the definitions of "agency" in other Federal statutes [3] indicate that the term has customarily been restricted in its usage by Congress to the persons vested under the statutes with the real power to act for the Government—those who actually have the power to act as (rather than merely for) the highest administrative authority of the Government establishment. [4] furthermore, it appears from the statement of the managers on the part of the House accompanying the Conference Committee Report, that the term "agency" as appearing in the Portal Act was employed in this sense. As there stated (p. 16), the regulations, orders, ruling, approvals, interpretations, administrative practices and enforcement policies relied upon and conformed with "must be those of an 'agency' and not of an individual officer or employee of the agency. Thus, if inspector A tells the employer that the agency interpretation is that the employer is not subject to the (Fair Labor Standards) Act, the employer is not relieved from liability, despite his reliance in good faith on such interpretations, unless it is in fact the interpretation of the agency." [5] Similarly, the Chairman of the Senate Judiciary Committee, in explaining the conference agreement to the Senate, made the following statement concerning the "good faith" defense. "It will be noted that the relief from liability must be based on a ruling of a Federal agency, and not a minor official thereof. I, therefore, feel that the legitimate interest of labor will be adequately protected under such a provision, since the agency will exercise due care in the issuance of any such ruling." [6]