

## Wage and Hour Division, Labor

## § 780.312

quarter of the current calendar year. Such employees are exempt under the basic provisions of section 13(a)(6)(A).

### § 780.307 Exemption for employer's immediate family.

Section 13(a)(6)(B) of the Fair Labor Standards Amendments of 1966 provides a minimum wage and overtime exemption in the case of "any employee engaged in agriculture \* \* \* if such employee is the parent, spouse, child, or other member of the employer's immediate family." The requirements of this exemption, evident from the statutory language, are that the employee be employed in agriculture and that he be a close blood relative, spouse or member of the employer's immediate family. Reference is made to subpart B of this part as to what constitutes employment in agriculture. The section 13(a)(6)(B) exemption applies to such an individual even though he is employed by an employer who otherwise used more than 500 man-days of agricultural labor in a calendar quarter of the preceding calendar year, as discussed in § 780.305.

### § 780.308 Definition of immediate family.

The Act does not define the scope of "immediate family." Whether an individual other than a parent, spouse or child will be considered as a member of the employer's immediate family, for purposes of sections 3(e)(1) and 13(a)(6)(b), does not depend on the fact that he is related by blood or marriage. Other than a parent, spouse or child, only the following persons will be considered to qualify as part of the employer's immediate family: Step-children, foster children, step-parents and foster parents. Other relatives, even when living permanently in the same household as the employer, will not be considered to be part of the "immediate family."

[38 FR 17726, July 3, 1973]

### § 780.309 Man-day exclusion.

Section 3(e)(1) specifically excludes from the employer's man-day total (as defined in section 3(u)) employees who qualify for exemption under section 13(a)(6)(B). See § 780.301. This man-day count is a basic factor in the applica-

tion of the section 13(a)(6)(A) exemption. See § 780.302 *et seq.*

### § 780.310 Exemption for local hand harvest laborers.

Section 13(a)(6)(C) was added to the Act by the Fair Labor Standards Amendments of 1966. The legislative history of the exemption indicates that it was intended to apply to the local worker who goes out on a temporary basis during the harvest season to harvest crops. The exemption was not intended to apply to a full-time farmworker, that is, one who earns a livelihood at farming. For instance, migrant laborers who travel from farm to farm were not intended to be within the scope of this exemption.

### § 780.311 Basic conditions of section 13(a)(6)(C).

(a) Section 13(a)(6)(C) of the Act applies to an employee who:

- (1) Is employed in agriculture.
- (2) Is employed as a hand harvest laborer.
- (3) Is paid on a piece-rate basis.
- (4) Is paid piece-rates in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment.
- (5) Commutes daily from his permanent residence to the farm on which he is so employed.
- (6) Has been employed in agriculture less than 13 weeks during the preceding calendar year.

(b) In order for the exemption to apply to an employee, all of the requirements must be met. Since a hand harvest laborer is normally an agricultural worker, while so engaged, such an employee would meet the basic requirements that he be employed in agriculture. Subpart B of this part contains a more detailed discussion of what constitutes employment in agriculture. The meaning and application of the remaining requirements are discussed in the following sections.

### § 780.312 "Hand harvest laborer" defined.

(a) The term hand harvest laborer for purposes of this exemption refers to farm workers engaged in harvesting by hand, or with hand tools, soil grown