

Subpart G—Employment in Agriculture and Livestock Auction Operations Under the Section 13(b)(13) Exemption

INTRODUCTORY

§ 780.600 Scope and significance of interpretative bulletin.

Subpart A of this part 780 and this subpart G together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(b)(13) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the overtime pay provisions of the Act for certain employees who, in the same workweek, are employed by a farmer in agriculture and also in the farmer's livestock auction operations. As appears more fully in subpart A of this part, interpretations in this bulletin with respect to provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The general exemptions provided in sections 13(a)(6) and 13(b)(12) of the Act for employees employed in agriculture are not discussed in this subpart except in its relation to section 13(b)(13). The meaning and application of these exemptions are fully considered in subparts D and E of this part 780.

§ 780.601 Statutory provision.

Section 13(b)(13) of the Fair Labor Standards Act exempts from the overtime provisions of section 7:

Any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a)(1).

§ 780.602 General explanatory statement.

Ordinarily, as discussed in subparts D and E of this part 780, an employee who in the same workweek engages in work which is exempt as agriculture under section 13(a)(6) or 13(b)(12) of the Act and also performs nonexempt work to which the Act applies is not exempt in that week (§780.11). Employees of a farmer are not employed in work exempt as "agriculture" while engaged in livestock auction operations in which the livestock offered at auction includes livestock raised by other farmers (*Mitchell v. Hunt*, 263 F. 2d 913 (C.A. 5); *Hearnberger v. Gillespie*, 435 F. 2d 926 (C.A. 8). However, under section 13(b)(13) an employee who is employed by a farmer in agriculture as well as in livestock auction operations in the same workweek will not lose the overtime exemption for that workweek, if certain conditions are met. These conditions and their meaning and application are discussed in this subpart.

REQUIREMENTS FOR EXEMPTION

§ 780.603 What determines application of exemption.

The application of the section 13(b)(13) exemption depends largely upon the nature of the work performed by the individual employee for whom exemption is sought. The character of the employer's business also determine the application of the exemption. Whether an employee is exempt therefore depends upon his duties as well as the nature of the employer's activities. Some employees of the employer may be exempt in some weeks and others may not.

§ 780.604 General requirements.

The general requirements for exemption under section 13(b)(13) are as follows:

- (a) Employment of the employee "primarily" in agriculture in the particular workweek.
- (b) This primary employment by a farmer.
- (c) Engagement by the farmer in raising livestock.
- (d) Engagement by the farmer in livestock auction operations "as an adjunct to" the raising of livestock.