

## Wage and Hour Division, Labor

## § 780.617

### § 780.610 Workweek exclusively in exempt work.

An employee who engages exclusively in a workweek in duties which come within the exemption under section 13(b)(13) and is paid in accordance with the requirements of that exemption, is exempt in that workweek from the overtime requirements of the Act.

### § 780.611 Workweek exclusively in agriculture.

In any workweek in which the employee works exclusively in agriculture, performing no duty in respect to livestock auction operations, his exemption for that week is determined by application of sections 13(a)(6) and 13(b)(12) to his activities. (See subparts D and E of this part.)

### § 780.612 Employment by a "farmer."

A further requirement for exemption is the expressed statutory one that the employee must be employed in agriculture by a "farmer." Employment by a nonfarmer will not qualify an employee for the exemption.

### § 780.613 "By such farmer."

The employee's primary employment in agriculture during the exempt week is also required to be by "such farmer." The phrase "such farmer" refers to the particular farmer by whom the employee is employed in agriculture and who engages in the livestock auction operations as an adjunct to his raising of livestock. Even if an employee may spend more than half of his work time in a workweek in agriculture, he would not be exempt if such employment in agriculture were engaged in for various persons so that less than the primary portion of his workweek was performed in his employment in agriculture by such farmer. For example, an employee may work a 60-hour week and be employed in agriculture for 50 of those hours, of which 20 hours are worked in his employment by the farmer who is engaged in the livestock auction operations, the other 30 being performed for a neighboring farmer. Although this employee was primarily employed in agriculture during the workweek he is not exempt. His primary employment in agriculture was not by the farmer

described in section 13(b)(13) as required.

### § 780.614 Definition of a farmer.

The Act does not define the term "farmer." Whether an employer is a "farmer" within the meaning of section 13(b)(13) must be determined by consideration of the particular facts, keeping in mind the purpose of the exemption. A full discussion of the meaning of the term "farmer" as used in the Act's definition of agriculture is contained in §§ 780.130 through 780.133. Generally, as indicated in that discussion, a farmer under the Act is one who engages, as an occupation, in farming operations as a distinct activity for the purpose of producing a farm crop. A corporation or a farmers' cooperative may be a "farmer" if engaged in actual farming of the nature and extent there indicated.

### § 780.615 Raising of livestock.

Livestock auction operations are within the 13(b)(13) exemption only when they are conducted as an adjunct to the raising of livestock by the farmer. The farmer is required to engage in the raising of livestock as a prerequisite for the exemption of an employee employed in the operations described in section 13(b)(13). Engagement by the farmer in one or more of the other branches of farming will not meet this requirement.

### § 780.616 Operations included in raising livestock.

Raising livestock includes such operations as the breeding, fattening, feeding, and care of domestic animals ordinarily raised or used on farms. A fuller discussion of the meaning of raising livestock is contained in §§ 780.119 through 780.122.

### § 780.617 Adjunct livestock auction operations.

The livestock auction operations referred to in section 13(b)(13) are those engaged in by the farmer "as an adjunct" to the raising of livestock. This phrase limits the relative extent to which the farmer may conduct livestock auctions and claim exemption under section 13(b)(13). To qualify under the exemption provision, the