

§ 780.806

included in the ginning of cotton unless it is done as a part of the whole ginning process in one gin establishment as a continuous and uninterrupted series of operations resulting in useful cotton products including the regular "gin" bales, the "mote" bales (short-fiber cotton), and the cottonseed.

§ 780.806 Exempt ginning limited to first processing.

As indicated in § 780.804, the ginning for which the exemption is intended is the first processing of the agricultural commodity, cotton, in its natural form, into lint cotton for market. It does not include further operations which may be performed on the cottonseed or the cotton lint, even though such operations are performed in the same establishment where the ginning is done. Delinting, which is the removal of short fibers and fuzz from cottonseed, is not exempt under section 13(b)(15). It is not first processing of the seed cotton; rather, it is performed on cottonseed, usually in cottonseed processing establishments, and even if regarded as ginning (*Mitchell v. Burgess*, 239 F. 2d 484) it is not the ginning of cotton for market contemplated by section 13(b)(15). It may come within the overtime exemption provided in section 7(d) of the Act for certain seasonal industries. (See § 526.11(b)(1) of part 526 of this chapter.) Compressing of cotton, which is the pressing of bales into higher density bales than those which come from the gin, is a further processing of the cotton entirely removed from ginning (*Peacock v. Lubbock Compress Co.*, 252 F. 2d 892). Employees engaged in compressing may, however, be subject to exemption from overtime pay under section 7(c). (See § 526.10(b)(8) of this chapter.)

§ 780.807 Cotton must be ginned "for market."

As noted in § 780.804, it is ginning of seed cotton which converts the cotton to marketable form. Section 13(b)(15), however, provides an exemption only where the cotton is actually ginned "for market." (*Wirtz v. Southern Pickery, Inc.* (W.D. Tenn.) 278 F. Supp. 729.) The ginning of cotton for some other purpose is not exempt work. Cot-

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ton is not ginned "for market" if it is not to be marketed in the form in which the ginning operation leaves it. Cotton is not ginned "for market" if it is being ginned preliminary to further processing operations to be performed on the cotton by the same employer before marketing the commodity in an altered form. (Compare *Mitchell v. Park* (D. Minn.), 14 WH Cases 43, 36 Labor Cases 65, 191; *Bush v. Wilson & Co.*, 157 Kans. 82, 138 P. 2d 457; *Gaskin v. Clell Coleman & Sons*, 2 WH Cases 977.)

EMPLOYEES "ENGAGED IN" GINNING

§ 780.808 Who may qualify for the exemption generally.

The exemption applies to "any employee engaged in" ginning of cotton. This means that the exemption may apply to an employee so engaged, no matter by whom he is employed. Employees of the gin operator, of an independent contractor, or of a farmer may come within the exemption in any workweek when all other conditions of the exemption are met. To come within the exemption, however, an employee's work must be an integral part of ginning of cotton, as previously described. The courts have uniformly held that exemptions in the Act must be construed strictly to carry out the purpose of the Act. (See § 780.2, in subpart A of this part.) No operation in which an employee engages in a place of employment where cotton is ginned is exempt unless it comes within the meaning of the term "ginning."

§ 780.809 Employees engaged in exempt operations.

Employees engaged in actual ginning operations, as described in § 780.804 will come within the exemption if all other conditions of section 13(b)(15) are met. The following activities are among those within the meaning of the term "engaged in ginning of cotton":

(a) "Spotting" vehicles in the gin yard or in nearby areas before or after being weighed.

(b) Moving vehicles in the gin yard or from nearby areas to the "Suction" and reparking them subsequently.

(c) Weighing the seed cotton prior to ginning, weighing lint cotton and seed