

## § 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

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subsequent to ginning (including preparation of weight records and tickets in connection with weighing operations).

(d) Placing seed cotton in temporary storage at the gin and removing the cotton from such storage to be ginned.

(e) Operating the suction feed.

(f) Operating the gin stands and power equipment.

(g) Making gin repairs during the ginning season.

(h) Operating the press, including the handling of bagging and ties in connection with the ginning operations of that gin.

(i) Removing bales from the press to holding areas on or near the gin premises.

(j) Others whose work is so directly and physically connected with the ginning process itself that it constitutes an integral part of its actual performance.

### § 780.810 Employees not “engaged in” ginning.

Since an employee must actually be “engaged in” ginning of cotton to come within the exemption, an employee engaged in other tasks, not an integral part of “ginning” operations, will not be exempt. (See, for rule that only the employees performing the work described in the exemption are exempt, *Wirtz v. Burton Mercantile and Gin Co., Inc.*, 234 F. Supp. 825, aff’d per curiam 338 F. 2d 414, cert. denied 380 U.S. 965; *Wirtz v. Kelso Gin Co., Inc.* (E.D. Ark.) 50 Labor Cases 31, 631, 16 WH Cases 663; *Mitchell v. Stinson*, 217 F. 2d 210; *Phillips v. Meeker Cooperative Light and Power Ass’n* 63 F. Supp. 743, affirmed 158 F. 2d 698; *Jenkins v. Durkin*, 208 F. 2d 941; *Heaburg v. Independent Oil Mill, Inc.*, 46 F. Supp. 751; *Abram v. San Joaquin Cotton Oil Co.*, 46 F. Supp. 969.) The following activities are among those not within the meaning of the term “engaged in ginning of cotton”:

(a) Transporting seed cotton from farms or other points to the gin.

(b) General maintenance work (as opposed to operating repairs).

(c) General office and custodial duties.

(d) “Watching” duties.

(e) Working in the seed house.

(f) Transporting seed, hulls, and ginned bales away from the gin.

(g) Any activity performed during the “off-season.”

### COUNTY WHERE COTTON IS GROWN IN COMMERCIAL QUANTITIES

### § 780.811 Exemption dependent upon place of employment generally.

Under the first part of section 13(b)(15), if the employee’s work meets the requirements for exemption, the location of the place of employment where he performs it will determine whether the exemption is applicable. This location is required to be in a county where cotton is grown in commercial quantities. The exemption will apply, however, to an employee who performs such work in “any” place of employment in such a county. The place of employment in which he engages in ginning need not be an establishment exclusively or even principally devoted to such operations; nor is it important whether the place of employment is on a farm or in a town or city in such a county, or whether or to what extent the cotton ginned there comes from the county in which the ginning is done or from nearby or distant sources. It is enough if the place of employment where the employee is engaged in ginning cotton for market is “located” in such a county.

### § 780.812 “County.”

As used in the section 13(b)(15) exemption, the term “county” refers to the political subdivision of a State commonly known as such, whether or not such a unit bears that name in a particular State. It would, for example, refer to the political subdivision known as a “parish” in the State of Louisiana. A place of employment would not be located in a county, within the meaning of the exemption, if it were located in a city which, in the particular State, was not a part of any county.

### § 780.813 “County where cotton is grown.”

For the exemption to apply, the employee must be ginning cotton in a place of employment in a county where cotton “is grown” in the described quantities. It is the cotton grown, not the cotton ginned in the place of employment, to which the quantity test is