

Wage and Hour Division, Labor

§ 780.311

the employees who are jointly employed.

[37 FR 12084, June 17, 1972, as amended at 38 FR 27520, Oct. 4, 1973]

§ 780.306 Calendar quarter of the preceding calendar year defined.

In applying section 13(a)(6)(A), it is necessary to consider each of the four calendar quarters (January 1–March 31; April 1–June 30; July 1–September 30; October 1–December 31) in the preceding calendar year (January 1–December 31). If in any calendar quarter of the preceding calendar year the employer used more than 500 man-days of agricultural labor, he must comply with the minimum wage requirements of section 6(a)(5) with respect to any employee not otherwise exempt in the current year. Compliance with the Act is required in the current year regardless of the number of man-days of agricultural labor used in the current year. On the other hand, if in the preceding calendar year the number of man-days used did not exceed 500 in any calendar quarter, there is no requirement to comply with respect to employment of agricultural labor in the current calendar year regardless of how many man-days are used in any calendar 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 application 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.