§ 780.400 Statutory provisions.

Section 13(b)(12) of the Fair Labor Standards Act exempts from the overtime provisions of section 7:

Any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes.

§ 780.401 General explanatory statement.

(a) Section 13(b)(12) of the Act contains the same wording as did section 13(a)(6) prior to the 1966 amendments. The effect of this is to provide a complete overtime exemption for any employee employed in “agriculture” who does not qualify for exemption under section 13(a)(6) (A), (B), (C), (D), and (E) of the 1966 amendments.

(b) In addition to exempting employees employed in agriculture, section 13(b)(12) also exempts from the overtime provisions of the Act employees employed in specified irrigation activities. Prior to the 1966 amendments these employees were exempt from the minimum wage and overtime pay requirements of the Act.

(c) For exempt employment in “agriculture,” see subpart B of this part.

§ 780.402 The general guides for applying the exemption.

(a) Like other exemptions provided by the Act, the section 13(b)(12) exemption is narrowly construed (Phillips, Inc. v. Walling, 334 U.S. 490; Bowie v. Gonzalez, 117 F. 2d 11; Calaf v. Gonzalez, 127 F. 2d 934; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; Fleming v. Swift & Co., 41 F. Supp. 825; Miller Hatcheries v. Boyer, 131 F. 2d 283; Walling v. Friend, 136 F. 2d 129; see also § 780.2 of subpart A of this part 780). An employer who claims the exemption has the burden of showing that it applies. (See § 780.2)

(b) When the Congress, in the 1961 amendments, provided special exemptions for some activities which had been held not to be included in the exemption for agriculture (see subparts F and J of this part 780), it was made very clear that no implication of disagreement with “the principles and tests governing the application of the present agriculture exemption as enunciated by the courts” was intended (Statement of the Managers on the part of the House, Conference Report, H. Rept. No. 327, 87th Cong. 1st sess., p. 18). Accordingly, an employee is considered an exempt agricultural or irrigation employee if, but only if, his work falls clearly within the specific language of section 3(f) or section 13(b)(12).

§ 780.403 Employee basis of exemption under section 13(b)(12).

Section 13(b)(12) exempts “any employee employed in * * *.” It is clear