

## § 780.807

## 29 CFR Ch. V (7-1-11 Edition)

### § 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. Cotton 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 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”:

## Wage and Hour Division, Labor

## § 780.814

- (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 applicable. The quantities of cotton ginned in the county do not matter, so long as the requisite quantities are grown there.

#### § 780.814 "Grown in commercial quantities."

Cotton must be "grown in commercial quantities" in the county where the place of employment is located if an employee ginning cotton in such place is to be exempt under section 13(b)(15). The term "commercial quantities" is not defined in the statute, but in the cotton-growing areas of the country there should be little question in most instances as to whether commercial quantities of cotton are grown in the county where the ginning is done. If it should become necessary to determine whether commercial quantities are grown in a particular county, it would appear appropriate in view of crop-year variations to consider average quantities produced over a representative period such as 5 years. On the question of whether the quantities grown are "commercial" quantities, the trade understanding of what are "commercial" quantities of cotton would be important. It would appear appropriate also to measure "commercial" quantities in terms of marketable lint cotton in bales rather than by acreage or amounts of seed cotton grown, since seed cotton is not a commercially marketable product (*Mangan v. State*, 76 Ala. 60). Also, production of a commodity in "commercial" quantities generally involves quantities sufficient for sale with a reasonable expectation of some return to the producers in excess of costs (*Bianco v. Hess* (Ariz.), 339 P. 2d 1038; *Nystel v. Thomas* (Tex. Civ. App.) 42 S.W. 2d 168).