which was ultimately delivered for agricultural purposes during the preceding calendar year'' for the prior requirement that all the water be used for agricultural purposes. Prior to the 1966 amendments employees employed in specified irrigation activities 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.

[37 FR 12084, June 17, 1972, as amended at 76 FR 18859, Apr. 5, 2011]

### § 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*, 156 F. 2d 429; 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) The section 13(b)(12) exemption for employment in agriculture is intended to cover all agriculture, including ''extraordinary methods'' of agriculture as well as the more conventional ones and large operators as well as small ones. Nevertheless, it was meant to apply only to agriculture. It does not extend to processes that are more akin to manufacturing than to agriculture. Practices performed off the farm by nonfarmers are not within the exemption, except for the irrigation activities specifically described in section 13(b)(12). Practices performed by a farmer do not come within the exemption for agriculture if they are neither a part of farming nor performed by him as an incident to or in conjunction with his own farming operations. These principles have been well established by the courts in such cases as *Mitchell* v. *Budd*, 350 U.S. 473; *Maneja* v. *Waialua*, 349 U.S. 254; *Farmers Reservoir Co.* v. *McComb*, 337 U.S. 755; *Addison* v. *Holly Hill Fruit Products*, 322 U.S. 607; *Calaf* v. *Gonzalez*, 127 F. 2d 934; *Chapman* v. *Durkin*, 214 F. 2d 363, certiorari denied, 348 U.S. 897; *McComb* v. *Puerto Rico Tobacco Marketing Co-op. Ass'n.* 80 F. Supp. 953, 181 F. 2d 697.

(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. first 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 from this language that it is the activities of the employee rather than those of his employer which ultimately determine the application of the exemption. Thus the exemption may not apply to some employees of an employer engaged almost exclusively in activities within the exemption, and it may apply to some employees of an employer engaged almost exclusively in other activities. But the burden of effecting segregation between exempt and nonexempt work as between different groups of employees is upon the employer.

### § 780.404 Activities of the employer considered in some situations.

Although the activities of the individual employee, as distinguished from those of his employer, constitute the ultimate test for applying the exemption, it is necessary in some instances to examine the activities of the employer. For example, in resolving the status of the employees of an irrigation company for purposes of the agriculture exemption, the U.S. Supreme Court, found it necessary to consider the nature of the employer's activities (*Farmers Reservoir Co.* v. *McComb*, 337 U.S. 755).