(section 6(a)(5)) for agriculture workers for the first time sought to provide a minimum wage floor for the farmworkers on large farms or agri-business enterprises. The section 13(a)(6)(A) exemption was intended to exempt those farmworkers on the smaller or familysize farms. In keeping with this intention, a labor requirement of 500 man-days was incorporated into the exemption, and certain workers were specifically excluded from the man-day count, as provided in section 3(e) (1) and (2).

§ 780.302 Basic conditions of section 13 (a)(6)(A).

Section 13(a)(6)(A) applies to an employee provided all the following conditions are met:

(a) He must be ''employed in agriculture''

(b) By an ''employer''

(c) Who did not use more than ''500 man-days'' of agriculture labor

(d) During any ''calendar quarter of the preceding calendar year.''

The following sections discuss the meaning and application of these requirements.

§ 780.303 Exemption applicable on employee basis.

Section 13(a)(6)(A) exempts ''any employee employed in agriculture * * * by an employer * * *.'' It is clear from this language that it is the activities of the employee rather than those of his employer which determine the application of the exemption. In other words, the exemption applies only to employees who are engaged in agricultural activities. Thus some employees of the employer may be exempt while others may not. In any case the burden of effecting segregation between exempt and nonexempt work as between different groups of employees is upon the employer. For a more detailed discussion of what constitutes employment in agriculture, see subpart B of this part.

§ 780.304 "Employed by an employer."

(a) The employer may be an individual, a partnership, or a corporation. It is not necessary that the employer be a farmer as defined in § 780.131. It is sufficient that he ''uses'' agricultural labor.

(b) In applying this exemption, one of the main criteria is the number of man-days of agricultural labor used by the employer. Section 13(a)(6)(A) provides that the exemption shall not apply to an employee employed in agriculture ''if such employee is employed by an employer who did not * * * use more than 500 man-days of agricultural labor * * *.'' From this language of the statute, the man-days of all agricultural workers, unless specifically excluded, of an employer whether he be the owner of a single farm, the owner of an enterprise consisting of several farms, a tenant farmer, an independent contractor, etc., are to be counted for purposes of section 13(a)(6)(A) whether they are employed at one place or several widely scattered places. For example if an employer owns and operates two farms, it is the total number of man-days used on both farms and not that used on each individual farm that determines whether he meets the 500 man-day test. Likewise independent contractor who harvests crops on different farms during the harvesting season must total all the man-days of agricultural labor used on all such farms except those excludable under section 3(e) in determining whether he meets the 500 man-day test.

§ 780.305 500 man-day provision.

(a) Section 3(u) of the Act defines *man-day* to mean ''any day during which an employee performs agricultural labor for not less than 1 hour.'' 500 man-days is approximately the equivalent of seven employees employed full-time in a calendar quarter. However, a farmer who hires temporary or part-time employees during part of the year, such as the harvesting season, may exceed the man-day test even though he may have only two or three full-time employees.

(b) All of the employer's employees who are engaged in ''agricultural labor'' except those specifically excluded by section 3(e) (see § 780.301) and those exempt under section 13(a)(14) (see subpart F of this part) must be counted in determining whether the 500 man-day test is met. This is true even though an employee may be exempt

from the monetary provisions under another section of the Act. For example, a general manager of a farm may be an exempt executive employee under section 13(a)(1) or a sheepherder may meet the requirements of section 13(a)(6)(E). Regardless of those exemptions, their man-days of employment would be included in the man-day count of the employer.

(c) A farmer whose crops are harvested by an independent contractor is considered to be a joint employer with the contractor who supplies the harvest hands if the farmer has the power to direct, control or supervise the work, or to determine the pay rates or method of payment for the harvest hands. (See § 780.331.) Each employer must include the contractor's employees in his man-day count in determining whether his own man-day test is met. Each employer will be considered responsible for compliance with the minimum wage and child labor requirements of the Act with respect to 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