

Chapter 20

AGRICULTURE: RELATED AND SEASONAL EXEMPTIONS

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Table of Contents

20a EMPLOYEES EMPLOYED IN AGRICULTURE: FLSA SECTIONS 13(a)(6) AND 13(b)(12)

20a00	Agricultural exemptions generally.
20a01	Interaction with other statutes.
20a02	Agriculture generally.
20a03	Primary agriculture.
20a04	Secondary agriculture.
20a05	Employees who qualify for an agricultural exemption.
20a06	Responsibility for compliance by independent contractors on farms.
20a07	Wage credits for furnishing board, lodging, and other facilities.
20a08	Sharecroppers and tenant farmers.
20a09	Man-days of joint employers and independent contractors.
20a10	(Reserved.)

20b EMPLOYED IN AGRICULTURE

20b00	(Reserved.)
20b01	Off-farm driving.
20b02	Field packers not employed by the farmer.
20b03	Stripping tobacco in an independent warehouse.
20b04	Fish farming.
20b05	Nurseries and florists.
20b06	Christmas trees.
20b07	Pine straw.
20b08	Wreath making.
20b09	Egg processing.
20b10	(Reserved).
20b11	Insect farming.

20c OUTSIDE BUYERS OF POULTRY, EGGS, CREAM, OR MILK: FLSA SECTION 13(b)(5)

20c00	Exemption generally.
20c01	Definition of outside buyer.
20c02	(Reserved).
20c03	(Reserved).
20c04	(Reserved).
20c05	(Reserved).
20c06	Employee may qualify for outside sales exemption.

20d EMPLOYMENT IN AGRICULTURE OR IRRIGATION: SECTION 13(b)(12)

- 20d00 Exemption generally.
- 20d01 Exempt agricultural employees.
- 20d02 Exempt irrigation employees.

20e LIVESTOCK AUCTION OPERATIONS: SECTION 13(b)(13)

- 20e00 Requirements of exemption.

20f SMALL COUNTRY ELEVATORS: FLSA SECTION 13(b)(14)

- 20f00 Exemption generally.
- 20f01 Requirements of exemption.
- 20f02 Definitions.
- 20f03 The 95 percent test.
- 20f04 Explanatory chart.

20g (RESERVED)

20h FRUIT AND VEGETABLE HARVEST TRANSPORTATION: FLSA SECTION 13(b)(16)

- 20h00 Exemption generally.
- 20h01 Applicability of exemption.

20i (RESERVED)

20j PERIODS OF FOURTEEN WEEKS: FLSA SECTIONS 7(m) AND 13(h)–(j)

- 20j00 Exemptions subject to 14-week limit.
- 20j01 Selecting weeks.
- 20j02 (Reserved).
- 20j03 (Reserved).
- 20j04 (Reserved).

20k-20s (RESERVED)

20t TOBACCO AUCTIONS: SECTION 7(m)

- 20t00 Criteria for exemption.
- 20t01 Limits of exemption.
- 20t02 10-48 rule.

20u COTTON AND SUGAR PROCESSING: FLSA SECTION 13(h)

- 20u00 Exemption generally.
- 20u01 Scope of exemption; 10-48 rule.
- 20u02 (Reserved).
- 20u03 (Reserved).

20v COTTON GINNING: FLSA SECTION 13(i)

- 20v00 Requirements of exemption.
- 20v01 Limits of exemption; 10-48 rule.
- 20v02 Cotton ginning.
- 20v03 Cotton must be ginned for market.
- 20v04 Ginning activities.
- 20v05 Non-ginning activities.
- 20v06 Counties where cotton is grown in commercial quantities.

20w SUGAR PROCESSING: FLSA SECTIONS 13(b)(15) AND 13(j)

- 20w00 Exemptions generally.
- 20w01 Requirements and limit of exemptions; 10-48 rule.
- 20w02 Activities constituting processing.
- 20w03 Non-processing activities.
- 20w04 Production must be of unrefined sugar or syrup.

20a EMPLOYEES EMPLOYED IN AGRICULTURE: FLSA SECTIONS 13(a)(6) AND 13(b)(12)

20a00 Agricultural exemptions generally.

Sections 13(a)(6) and 13(b)(12) of the FLSA are agricultural exemptions. Section 13(a)(6)(A) exempts employees employed in agriculture from the Act's minimum wage and overtime requirements in certain circumstances. Section 13(b)(12) exempts employees employed in agriculture from the Act's overtime requirements. WHD's interpretations of these exemptions are in 29 CFR part 780.

References:

29 U.S.C. 213(a)(6), (b)(12)

[29 CFR 780](#)

20a01 Interaction with other statutes.

WHD administers and enforces several statutes that apply to the agriculture industry. Agricultural workers are often covered by more than one of these statutes at any given time. Coverage is determined independently for each statute.

20a02 Agriculture generally.

Agriculture includes primary agriculture and secondary agriculture. Workers engaged in primary agriculture are considered employed in agriculture for that workweek regardless of who they are employed by or where they are working. Workers engaged in secondary agriculture in a given workweek are considered employed in agriculture only if the activities are performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.

References:

29 U.S.C. 203(f)

[29 CFR 780.103](#)

[29 CFR 780.105](#)

20a03 **Primary agriculture.**

(a) *Primary agriculture* “includes farming in all its branches[.]” Among other things, it includes:

- (1) Cultivating and tilling the soil;
- (2) Dairying;
- (3) Producing, cultivating, growing, and harvesting agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended); and
- (4) Raising livestock, bees, fur-bearing animals, or poultry.

(b) Whether a worker is engaged in primary agriculture in a given workweek does not depend upon the employer’s identity or where the work is performed. If the worker is engaging in one or more of the listed activities, the worker is engaging in agriculture.

References:

29 U.S.C. 203(f)

[29 CFR 780.105](#)

[29 CFR 780.106](#)

20a04 **Secondary agriculture.**

(a) **Definition.**

Secondary agriculture includes all practices, including forestry or lumbering operations, performed:

- (1) By a farmer or on a farm, and
- (2) As an incident to or in conjunction with such farming operations.

It includes preparation for market, delivery to storage or to market, and carriers for transportation to market.

(b) **Farmer.**

Farmer includes individuals, partnerships, associations, corporations, and employees of a farmer that engage in actual farming operations.

(c) **On a farm.**

A minor and incidental amount of work performed off the farm in a given workweek does not, by itself, defeat the “on a farm” requirement.

(d) **Incidental or in conjunction with such farming operations.**

Generally, work is *incidental to or in conjunction with the farming operations* if it is an established part of agriculture, subordinate to the farming operations of the farm, and not an independent business.

References:

29 U.S.C. 203(f)

[29 CFR 780.105](#)

[29 CFR 780.128](#)

[29 CFR 780.129](#)

[29 CFR 780.130–780.133](#)

20a05 Employees who qualify for an agricultural exemption.

(a) Criteria for overtime exemption.

All employees employed in agriculture qualify for the overtime pay exemption.

(b) Criteria for minimum wage and overtime exemption.

Employees employed in agriculture are exempt from the FLSA's minimum wage and overtime requirements if they satisfy any of these five criteria:

- (1) The employee is employed by an employer that did not, in any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor.
- (2) The employee is the parent, spouse, child, or other member of the employer's immediate family.
- (3) The employee:
 - a. Is employed as a hand-harvest laborer and paid on a piece rate basis in an operation that has been, and is customarily and generally recognized as having been, paid on a piece rate basis in that region,
 - b. Commutes daily from his permanent residence to the farm on which he is employed, and
 - c. Has been employed in agriculture fewer than thirteen weeks during the preceding calendar year.
- (4) The employee, other than an employee described in (b)(3):
 - a. Is sixteen years of age or younger and is employed as a hand-harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,
 - b. Is employed on the same farm as his parent or person standing in the place of his parent, and
 - c. Is paid at the same piece rate as employees over age sixteen are paid on the same farm.
- (5) The employee is principally engaged in the range production of livestock.

(c) Employees of conglomerates.

- (1) A conglomerate may not claim the agricultural minimum wage exemption for its employees. It may still claim the overtime exemption for them.
- (2) A *conglomerate* is an establishment that:
 - a. Is controlled by, controls, or is under common control with another establishment whose activities materially support the employing establishment's activities but do not have a common business purpose with them; and
 - b. Has an annual gross volume of sales made or business done—when combined with the same figures for the controlling, controlled, or commonly controlled establishment—of more than \$10 million.

References:

29 U.S.C. 213(a)(6)

29 U.S.C. 213(b)(12)

29 U.S.C. 213(g)

[29 CFR 780.300–780.332](#)

20a06 Responsibility for compliance by independent contractors on farms.

Some farmers use farm labor contractors to supply workers. In those situations, the farmer and the farm labor contractor may be joint employers of the workers and will both be responsible for violations of the FLSA. FOH Chapter 10 discusses joint employer liability.

References:

[29 CFR 791.2\(a\)\(1\)](#)

FOH 10

20a07 Wage credits for furnishing board, lodging, and other facilities.

(a) In general.

Employers may generally claim as part of their wage obligations the reasonable cost or fair value of furnishing to employees board, lodging, and other facilities. Thus, an agricultural employer may generally treat as wages the reasonable cost or fair value of board, housing, fuel, and a garden plot furnished to the employee. Where, for example, the employer furnishes facilities such as a house and garden plot to a family with several members working on the employer's farm during the year, the employer may not charge more than the amount representing the reasonable cost to the employer, or the fair value of such facilities, to the entire family occupying the house.

(b) Costs that do not qualify as wage credits.

- (1) An employer cannot claim as a credit costs incurred primarily for its own benefit or convenience.
- (2) "Other facilities" must be something like board or lodging.

(c) Transportation and recruitment costs for nonimmigrant workers.

Employers may not charge or pass on to nonimmigrant workers, including H-2A temporary agricultural workers, the costs of inbound transportation and subsistence, recruitment costs, visa fees, or any other cost for any activity related to obtaining H-2A labor certification. These expenses are primarily for the benefit of the employer and are therefore not “other facilities” for which the employer may claim a wage credit. These expenses, when shifted to the employee, either directly or indirectly, constitute deductions to employees’ pay, and the employer must reimburse them in the first workweek to the extent they effectively reduce an employee’s hourly rate of pay below the federal minimum wage.

References:

29 U.S.C. 203(m)

[29 CFR 531.32](#)

[29 CFR 531.36\(b\)](#)

[75 FR 6884, 6913–16](#)

20a08 Sharecroppers and tenant farmers.

Whether sharecroppers and tenant farmers are employees or independent contractors is determined under the same standards as in other contexts. Those standards are fully discussed in FOH Chapter 10.

References:

[29 CFR 780.330](#)

FOH 10

20a09 Man-days of joint employers and independent contractors.

When counting man-days for purposes of the minimum wage exemption for agricultural employees, include only those man-days worked by an agricultural worker for a particular employer’s operations. Man-days of a jointly employed worker (for example, by a farm labor contractor and an agricultural employer) count toward each employer’s total in a given calendar quarter. On the other hand, if a worker is employed by multiple farmers whose operations are truly independent, only the man-days worked for each particular employer’s operations are counted toward that employer’s total.

References:

29 U.S.C. 213(a)(6)(A)

[29 CFR 780.304](#)

[29 CFR 780.305](#)

20a10 (Reserved.)

20b EMPLOYED IN AGRICULTURE

20b00 (Reserved.)

20b01 Off-farm driving.

Workers employed by someone other than the farmer, such as the harvesting crew of a canner, processor, packer, or independent contractor, or employees of a chicken factory or hatchery, are employed in agriculture if they are employed on a farm in duties that constitute primary or secondary agriculture. That a minor and incidental part of the employees' work occurs off the farm will not change the situation. For example, an employee may spend a small amount of time within the workweek transporting equipment or other employees to and from the farm or between farms, or where the off-farm driving is isolated or sporadic.

References:

[29 CFR 780.136](#)

20b02 Field packers not employed by the farmer.

Employees not employed by the farmer (such as employees of a shipper, packer, or independent harvesting contractor) are employed in agriculture if they are engaged in field packing either in the field or on the edge of the field where the produce is grown. "Field packing" includes operations such as setting up or distributing packing containers; sorting, trimming, and washing the produce; placing the produce in containers; closing or fastening the containers; cooling (but not freezing) the produce; and loading. Operations performed away from the field or its edge, including transportation to market or to shipping points, unloading, cooling, or reloading are not within the meaning of "field packing" and are not agriculture.

References:

[29 CFR 780.109](#)

[29 CFR 780.134-136](#)

20b03 Stripping tobacco in an independent warehouse.

Stripping tobacco is "preparation for market" and may qualify as secondary agriculture. If it is stripped in an independent warehouse, the employment relationship determines whether the employee is engaged in secondary agriculture:

- (a) **The tobacco strippers are independently employed by each farmer:** They are employed in agriculture, if the tobacco stripping performed for each farmer is a subordinate part of the farmer's activities.
- (b) **The tobacco strippers are employed by the warehouse:** They are not employed in agriculture because the tobacco stripping is not performed by a farmer.
- (c) **The tobacco strippers are jointly employed by several farmers:** They are not employed in agriculture because the tobacco stripping is not incidental to any particular farmer's farming operations.

References:

29 U.S.C. 203(f)

[29 CFR 780.132](#), [780.137](#)

[29 CFR 780.141](#)

[29 CFR 780.151](#)

20b04 Fish farming.

Fish farming is included in the term “farming in all its branches.” An employee engaged in fish farming may also be eligible for the minimum wage exemption available to certain employees of fishing operations as described in FOH Chapter 25.

References:

29 U.S.C. 203(f)

29 U.S.C. 213(a)(5)

[29 CFR 780.109](#)

[29 CFR 780.120](#)

FOH 25d

20b05 Nurseries and florists.

(a) Nursery and florist work may constitute agriculture.

Nursery operators and florists sometimes purchase or secure agricultural or horticultural commodities, such as rooted cuttings or young plants, from others. Employees whose duties are connected to these operations may be engaged in activities, such as cultivation or growing, that qualify as primary agriculture. Whether the activities constitute agriculture depends on all the facts and circumstances, including whether the operations performed on the plants are intended to produce growth to maturity or substantial maturity or are merely designed to care for and preserve the plants while they are on the employer’s premises. Relevant factors include:

- (1) The plant’s stage of development when it is obtained (that is, whether it is immature, substantially mature, or fully matured),
- (2) The nature and purpose of operations performed on the plant, and
- (3) The length of time between the plant’s being obtained and its being sold or other disposed of, and its stage of development during the time.

(b) Examples.

- (1) A nursery might receive substantially mature plants that are merely potted and preserved for a short time before being sold. These plants are not being cultivated or grown within the definition of primary agriculture. This is also the case when substantially mature trees and shrubs from other nurseries are planted or “heeled in” for later use in landscaping operations.
- (2) The nursery might receive rooted cuttings or young plants that require substantial growth to reach maturity or a root system to be developed. If these plants require regular and intensive care such as spraying, watering, and fertilizing, they are being cultivated or grown, and the employees performing those tasks are engaged in primary agriculture.

References:

29 U.S.C. 203(f)

[29 CFR 780.205–780.209](#)

20b06 Christmas trees.

- (a) Producing trees through extensive agricultural or horticultural techniques to be harvested and sold for seasonal ornamental use as Christmas trees is agriculture. This typically involves planting seedlings in beds in a nursery; on-going treatment with fertilizer, herbicides, and pesticides as necessary; re-planting in line-out beds; lifting and re-planting the small trees in cultivated soil with continued treatment with fertilizers, herbicides, and pesticides as indicated by testing to see if such applications are necessary; annual pruning or shearing; and harvesting within seven to ten years of planting.
- (b) Gathering trees to be used as Christmas trees from the wild, such as from forests or uncultivated land, is not agriculture. It may constitute forestry or lumbering operations for purposes of those exemptions, described in FOH Chapter 25.

References:

29 U.S.C. 203(f)

29 U.S.C. 213(b)(28)

[29 CFR 780.216](#)

[29 CFR 788.18](#)

FOH 25e

20b07 Pine straw.

- (a) Pine straw is the fresh, undecomposed pine needles that have fallen from pine trees. It is produced commercially and collected for use as mulch and groundcover. Raking, gathering, baling, and loading pine straw for commercial purposes are activities usually performed in pine stands or plantations, from pine trees grown for forestry and lumbering operations.
- (b) Based on the plain language of the statute, forestry and lumbering operations, and thus pine straw activities, are not primary agriculture. Pine straw activities generally will not qualify as secondary agriculture, unless all the activities are performed by a farmer or on a farm in conjunction with the other farming operations. Pine straw workers are therefore unlikely to qualify for an agricultural exemption.
- (c) Pine straw work is typically considered forestry or lumbering operations because pine straw is a natural substance of trees and therefore a “forestry product.” Therefore, pine straw workers may qualify for the forestry exemption, which is described in FOH Chapter 25.
- (d) Generally, the FLSA’s agricultural child labor standards, allowing pine straw workers under the age of 16 to perform all pine straw activities except operating and assisting in operation of a forklift, apply only to those pine straw activities that qualify as secondary agriculture. The FLSA child labor provisions for nonagricultural work prohibit workers under the age of 16 from employment in pine straw activities and prohibit those who are 16 and 17 years old from operating or assisting in the operation of power-driven hoisting devices, such as forklifts, backhoes, and skid steer loaders.
- (e) Because pine straw activities generally do not qualify as agriculture, pine straw employers may continue to use the H-2B temporary worker program as opposed to the H-2A temporary worker program.

References:

29 U.S.C. 213(b)(28)

[Administrator’s Interpretation 2012-1](#)

FOH 25e

20b08 **Wreath making.**

(a) **Wreath-making exemption generally.**

FLSA section 13(d) exempts from the Act’s minimum wage, overtime pay, and child labor protections certain homeworkers employed in making wreaths from evergreens and in harvesting evergreens and other forest products for use in making wreaths. To qualify:

- (1) The employee must be a homemaker;
- (2) The employee must be engaged in making wreaths as a homemaker;
- (3) The wreaths must be made principally of evergreens; and
- (4) The harvesting by the homeworkers must be for use in making the wreaths by homeworkers.

(b) **Home.**

The exemption does not apply when the wreaths are made in or about a place that is not considered a “home.”

(c) **Composed principally of evergreens.**

- (1) The exemption applies only to making wreaths composed principally of natural holly, pine, cedar, or other evergreens. “Other evergreens” includes any plant that retains its greenness through all the seasons of the year. These include laurel, ivy, yew, and fir.
- (2) If a wreath is composed of multiple materials, the evergreens should compose a greater part of the wreath than all the other materials together, including materials such as frames, stands, and wires. Making wreaths in which natural evergreens are secondary components is not exempt.

(d) **Limits on harvesting.**

The homemaker may harvest evergreens and other forest products to use in making the wreath. This does not extend to harvesting forest products for other uses, nor does it apply to harvesting for wreath making by anyone other than the homeworkers. For example, harvesting evergreens to sell or distribute to an employer who uses them in a wreath-making factory is not exempt under the wreath making exemption. It may qualify for the forestry and lumbering exemption.

References:

29 U.S.C. 213(b)(28), 213(d)

[29 CFR 780.1000–780.1016](#)

FOH 25e

20b09 **Egg processing.**

(a) **Criteria to qualify as exempt.**

An employee performing egg processing activities is performing exempt agricultural work in a particular workweek if:

- (1) The employee processes only eggs produced by the farmer-employer;
- (2) The processing is more like agriculture than it is manufacturing; and
- (3) The processing operation is subordinate to the farming operation and not an independent business operation.

(b) May be secondary agriculture.

- (1) Though raising chickens and harvesting of eggs may qualify as primary agriculture, processing eggs does not.
- (2) Egg processing may be secondary agriculture. Egg processing activities are incidental to or in conjunction with farming operations if, among other things, the egg processing facility is subordinate to a farmer's farming operations. By contrast, egg processing facilities that operate as independent businesses are not subordinate to farming operations and their employees are not engaged in agriculture.

(c) Processing other farmers' eggs is not secondary agriculture.

Whether employees of an egg processing facility are engaged in secondary agriculture depends on whether the eggs being processed were produced by the farmer-employer. Processing eggs produced by another farmer is not incidental to the farming operations of the farmer-employer and therefore does not qualify as secondary agriculture under the Act. If an employee handles eggs from outside producers during a workweek, the employee is not exempt in that workweek.

(d) Criteria to qualify as secondary agriculture.

When examining whether activities performed by the farmer-employer on agricultural commodities produced by the farmer-employer fall within the definition of secondary agriculture, courts consider the following non-exhaustive list of "special" factors:

- (1) The type of product resulting from the practice (i.e., whether the raw or natural state of the commodity has been changed);
- (2) The value added to the product as a result of the practice;
- (3) Whether a sales organization is maintained for the disposal of the product;
- (4) The length of the period during which the operations are performed (when considered together with the amount of investment, payroll, and other factors discussed above); and
- (5) Whether products resulting from the activity are sold under the producer's own label rather than under that of the purchaser.

Factors such as whether supervisory personnel oversee both the regular farming and the processing operations may be relevant to determining whether employees employed in egg processing operations are engaged in secondary agriculture.

(e) Agricultural processing vs. manufacturing.

- (1) Certain egg processing activities (such as handling, cooling, grading, candling, and packing) may be performed to prepare eggs for market. They are closer to common agricultural activities and thus considered secondary agriculture. A process that results in important changes to an agricultural or horticultural commodity, however, is more akin to manufacturing than to agriculture. Once the egg is no longer in its unmanufactured state, the agriculture exemption is lost. Whether the egg remains unmanufactured depends on factors such as whether its chemical composition has changed and whether foreign ingredients have been added to it.
- (2) Breaking eggs and processing in preparation for market whole liquid eggs, egg yolks, egg whites, and other various components of the eggs are all activities that may be secondary agriculture if they do not involve adding foreign ingredients to the eggs or effecting an essential change to the eggs' raw or natural state. Some egg processing activities, such as salting and sugaring eggs, however, do not qualify as secondary agriculture because such activities involve adding foreign ingredients to the agricultural commodity.

(f) Agricultural activity vs. distinct business activity.

If an egg producer operates an egg-processing facility as an independent business enterprise, not integrated into the producer's farming operations, the egg processing is not incidental to or in conjunction with the primary egg farming activities and does not qualify as secondary agriculture. Whether the facility is part of the agricultural activity or is a distinct business activity depends on factors including:

- (1) The size of the operations;
- (2) Respective sums invested in land, buildings, and equipment for the regular farming operations and invested in plant and equipment for performance of the practice;
- (3) The amount of the payroll for each type of work;
- (4) The number of employees and the amount of time they spend in each of the activities;
- (5) The extent to which the practice is performed by ordinary farm employees and the amount of interchange of employees between the operations;
- (6) The amount of revenue derived from each activity;
- (7) The degree of industrialization involved; and
- (8) The degree of separation established between the activities.

References:

[29 CFR 780.105](#)

[29 CFR 780.141](#)
[29 CFR 780.144](#)
[29 CFR 780.145](#)
[29 CFR 780.147](#)
[29 CFR. 780.151\(d\)](#)
[Field Assistance Bulletin No. 2013-1](#)

20b10 **(Reserved).**

20b11 **Insect farming.**

Feeding, watering, harvesting, cleaning, and breeding insects such as crickets, discoid roaches, and “superworms” for animal feed and human consumption constitute a form of farming and are agriculture. Secondary agriculture related to insect farming could include activities such as on-site maintenance, pest control measures, and receiving farm materials.

References:

29 U.S.C. 203(f)

29 U.S.C. 213(b)(12)

[29 CFR 780.105](#)

[WHD Opinion Letter FLSA2020-18 \(Nov. 30, 2020\)](#)

20c **OUTSIDE BUYERS OF POULTRY, EGGS, CREAM, OR MILK: FLSA SECTION 13(b)(5)**

20c00 **Exemption generally.**

FLSA section 13(b)(5) exempts from the Act’s overtime requirements individuals employed as outside buyers of poultry, eggs, cream, or milk in their raw or natural state.

References:

29 U.S.C. 213(b)(5)

20c01 **Definition of outside buyer.**

Outside buyer is not defined by the FLSA and so takes its ordinary meaning: An employee engaged in buying or contracting to buy the appropriate goods and who regularly performs those duties away from the employer’s place of business.

References:

29 U.S.C. 213(b)(5)

Sandifer v. U.S. Steel Corp., 571 U.S. 220 (2014)

20c02 **(Reserved).**

20c03 **(Reserved).**

20c04 **(Reserved).**

20c05 **(Reserved).**

20c06 **Employee may qualify for outside sales exemption.**

An employee who performs the duties of an outside buyer may be exempt from the FLSA's overtime and minimum wage requirements as an outside salesperson.

References:

28 U.S.C. 213(a)

[29 CFR 541.500–541504](#)

20d EMPLOYMENT IN AGRICULTURE OR IRRIGATION: FLSA SECTION 13(b)(12)

20d00 Exemption generally.

FLSA section 13(b)(12) exempts from the Act's overtime requirements two classes of employees: those employed in agriculture and those employed in connection with certain irrigation facilities.

20d01 Exempt agricultural employees.

Unlike the minimum wage exemption, the overtime exemption is not limited; it applies to all those employed in agriculture.

20d02 Exempt irrigation employees.

- (a) In addition those employed in agriculture, the exemption applies to workers employed in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways:
- (1) That are not owned or operated for profit and
 - (2) That are used exclusively to supply and store water,
 - (3) At least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year.
- (b) An irrigation system that is operated on a share-crop basis qualifies as being not-for-profit.

References:

29 U.S.C. 213(b)(12)

[29 CFR 780.406](#)

20e LIVESTOCK AUCTION OPERATIONS: FLSA SECTION 13(b)(13)

20e00 Requirements of exemption.

- (a) FLSA section 13(b)(13) exempts from the Act's overtime requirements employees employed in connection with a farmer's livestock auction operations. The exemption applies if:
- (1) The employee is employed by a farmer in connection with the farmer's livestock auction operations;
 - (2) The farmer's livestock auction operations are an adjunct to raising livestock, either by the farmer alone or in conjunction with other farmers;

- (3) The employee is primarily employed in agriculture by the farmer during the workweek; and
 - (4) The employee is paid at least the federal minimum wage for his livestock-auction work.
- (b) WHD’s general interpretations of the exemption are in 29 CFR part 780.

References:

29 U.S.C. 213(b)(13)

[29 CFR 780.600–780.621](#)

20f SMALL COUNTRY ELEVATORS: FLSA SECTION 13(b)(14)

20f00 Exemption generally.

- (a) FLSA section 13(b)(14) exempts from the FLSA’s overtime requirements employees of country elevators in the elevator’s area of production. WHD’s basic interpretations of this exemption are located at 29 CFR part 780, subpart H.
- (b) The term “area of production” is defined in 29 CFR 536.3.

References:

[29 CFR 536.3](#)

20f01 Requirements of exemption.

- (a) Workers qualify for the exemption if they are employed by a country elevator that has no more than five employees and if they are employed within the elevator’s area of production.
- (b) The elevator must be located in the open country or a rural community.
- (c) At least 95 percent of the agricultural commodities that the elevator receives for storage or market must come from normal rural sources of supply within the area of production.
- (d) The elevator may sell products and services used in operating a farm

References:

29 U.S.C. 213(b)(14)

[29 CFR 536.3\(a\)](#)

20f02 Definitions.

- (a) **Area of production.**

The *area of production* is 50 miles for grain and soybeans and 20 miles for all other agricultural commodities.

References:

[29 CFR 536.3\(a\)](#)

- (c) **Open country or rural community.**

A location is in the *open country or a rural community* if it is not:

- (1) A city, town, or other urban place with a population of 2,500 or more; or
- (2) Within a certain distance, in airline miles, of a city, town, or other urban place with certain populations. The population levels and distances are:

Population	Distance
2,500–49,999	1 mile
50,000–499,999	3 miles
500,000 and above	5 miles

Whether a location’s population is 500,000 or more depends on the latest available U.S. Census.

(d) Normal rural sources of supply.

Normal rural sources of supply are:

- (1) Farms, within the appropriate distance;
- (2) Farm assemblers or other establishments through which the commodity normally moves, if within the appropriate distance and located within the open country or a rural community; and
- (3) Farm assemblers or other establishments not located in the open country or a rural community if the commodities were produced on farms within the appropriate distances.

References:

[29 CFR 536.3\(b\)](#)

20f03 The 95 percent test.

- (a) The commodities arriving at the establishment in a particular month determine whether 95 percent of the commodities come from the “normal rural source of supply” during the preceding month.
- (b) The commodities an elevator receives are measured by weight, volume, or other physical unit of measure. If the elevator receives commodities that are customarily measured in incomparable physical units, the commodities are measured by dollar value.

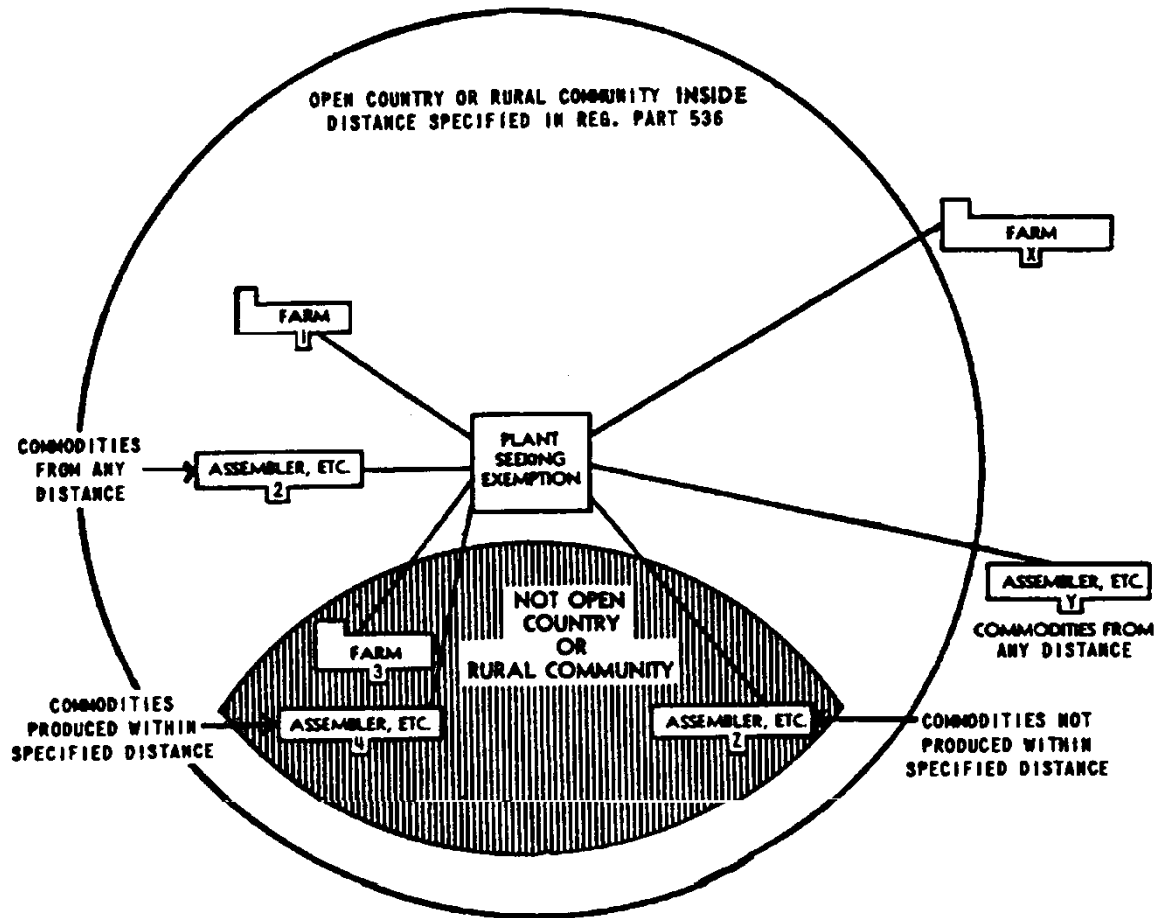
References:

[29 CFR 536.3\(b\)\(3\)](#)

20f04 Explanatory chart.

- (a) This chart demonstrates sources that do and do not qualify when determining whether an elevator qualifies for an exemption. The circle is the 20- or 50-mile area of production.

- (b) Receipts from Farm 1, Assembler 2, Farm 3, and Assembler 4 count toward the 95 percent threshold.
- (c) Receipts from Farm X, Assembler Y, and Assembler Z do not count toward the 95 percent threshold. If more than 5 percent of the commodities come from such sources, the exemption does not apply.



20g (RESERVED)

20h FRUIT AND VEGETABLE HARVEST TRANSPORTATION: FLSA SECTION 13(b)(16)

20h00 Exemption generally.

FLSA section 13(b)(16) exempts from the Act's overtime requirements certain employees engaged in transporting, or preparing for transport, fruits or vegetables from a farm. WHD's basic interpretations of this exemption are in 29 CFR, part 780, subpart J.

References:
 29 U.S.C. 213(b)(16)
[29 CFR 780.900–780.923](https://www.ecfr.gov/current/title-29/chapter-I/subchapter-J/part-780)

20h01 **Applicability of exemption.**

(a) Employees who qualify.

- (1) Employees are exempt if they are engaged in:
 - a. Transporting fruits or vegetables, or preparing them for transportation, from the farm to the place in the same state where they are first processed or marketed; or
 - b. Transporting to or from the farm, from or to a point within the same state, persons employed, or to be employed, in harvesting fruits or vegetables.
- (2) The employee need not be employed by a farmer to qualify for the exemption. A farmer's employee engaged in qualifying activities is exempt whether or not the transportation is incident to or in conjunction with the farmer's own operations.

References:

29 U.S.C. 213(b)(16)

[29 CFR 780.905](#)

(b) Preparation for transportation.

- (1) Only those activities necessary to prepare the fruits or vegetables for transportation qualify for the exemption. These activities vary depending on the commodity.
- (2) Examples of nonexempt preparation include:
 - a. Retail packing;
 - b. Preparation for market, such as ripening, cleaning, grading, or sorting; and
 - c. Processing or canning.

References:

[29 CFR 780.912–780.913](#)

(c) Scope of exemption for transporting harvesters.

- (1) The exemption applies only to those actually engaged in transporting workers, such as drivers and drivers' helpers. Office employees, mechanics, and other employees of the employer who do not actually transport the workers are not exempt.
- (2) The transported workers must be employed to harvest the fruits or vegetables, meaning to remove them from their growing position in the fields. Transporting workers employed to plant or cultivate fruits or vegetables is not exempt.

References:

[29 CFR 780.919–780.920](#)

(d) Sugar cane and sugar beets.

Neither sugar cane nor sugar beets qualify as fruits or vegetables. Employees who transport those commodities may qualify for other exemptions.

References:

20 U.S.C. 213(b)(16)

29 U.S.C. 213(b)(26)

29 U.S.C. 213(h)(1)(D)

[29 CFR 780.907](#)

20i (RESERVED)

20j PERIODS OF FOURTEEN WEEKS: FLSA SECTIONS 7(m) AND 13(h)–(j)

20j00 Exemptions subject to 14-week limit.

The partial overtime exemptions for work related to tobacco auctions, ginning or processing cotton, and processing sugar cane or sugar beets allow an employer to claim an exemption for only 14 weeks out of the year:

- (a) Section 7(m) exempts employees who provide services related to the sale, buying, handling, stemming, re-drying, packing, and storing of certain kinds of tobacco for purchase or sale at auction. The exemption is limited to 14 weeks per calendar year. An employer that claims this exemption is not eligible to claim any other exemptions under FLSA Section 7.
- (b) Section 13(h) exempts employees who provide services related to ginning and processing cotton or processing sugar cane or sugar beets. The work must be performed at establishments primarily engaged in the type of work the employee is employed to perform. The exemption is limited to 14 weeks in a calendar year. An employer that claims this exemption is not eligible to claim any other exemption.
- (c) Section 13(i) exempts employees engaged in ginning (but not processing) cotton for market. The work must be performed in a county where cotton is grown in commercial quantities, rather than an establishment primarily engaged in cotton processing. The exemption is limited to 14 weeks in a 52-week period.
- (d) Section 13(j) exempts employees engaged in processing sugar beets, sugar beet molasses, or sugar cane into non-refined sugar or syrup. It does not have limits on geography or places of business. The exemption is limited to 14 weeks in a 52-week period.

References:

29 U.S.C. 207(a)

29 U.S.C. 213(h)–(j)

20j01 Selecting weeks.

- (a) Except as otherwise described, the employer may choose the 14 exempt weeks. The employer may take the exemption only in those workweeks in which the employer performs the covered operations and only for those employees whom the employer compensates at time-and-a-half for hours worked in excess of (a) 10 a day and (b) 48 a week.

- (b) The exempt weeks do not need to run consecutively. The employer may decide to apply the exemption at the end of each workweek during which the exemption is available.

References:

29 U.S.C. 213(h)

29 U.S.C. 213(i)

29 U.S.C. 213(j)

[29 CFR 516.18](#)

20j02 **(Reserved).**

20j03 **(Reserved).**

20j04 **(Reserved).**

20k–20s **(RESERVED)**

20t **TOBACCO AUCTIONS: SECTION 7(m)**

20t00 **Criteria for exemption.**

Section 7(m) exempts from the Act’s overtime requirements an employee employed to perform certain work in tobacco auctions.

- (a) The exempt work and the types of tobacco to which it applies are shown in the table.

Work in auction	Green leaf tobacco Types 11–14, 21–24, 31, and 35–37	Green leaf tobacco Type 32	Perishable cigar leaf tobacco Types 41–46, 51–55, and 61–62
Buying	X	X	X
Grading		X	X
Handling	X	X	X
Packing	X	X	X
Re-drying	X	X	
Sale	X	X	X
Sizing			X
Sorting		X	X
Stemming	X		
Stemming before packing			X
Storing	X	X	
Stripping			X

- (c) In addition, employees qualify for the exemption if they are employed to provide services (including stripping and grading) necessary and incidental to selling at auction the types of tobacco from the first column.

- (d) The types of tobacco are as defined by the Secretary of Agriculture.

References:

29 U.S.C. 207(m)

20t01 Limits of exemption.

- (a) An employer may claim the exemption for no more than 14 weeks per calendar year.
- (b) An employer that claims this exemption cannot claim other exemptions available under Section 7 of the Act.

20t02 10-48 rule.

During the 14-week exemption period, the employee must receive for employment that exceeds 10 hours in a workday and exceeds 48 hours in a workweek compensation at no less than 1½ times the employee's regular rate of pay.

References:

29 U.S.C. 207(m)

20u COTTON AND SUGAR PROCESSING: FLSA SECTION 13(h)

20u00 Exemption generally.

FLSA section 213(h) partially exempts from the Act's overtime requirements employees employed in services necessary and incidental to cotton and sugar processing. WHD has not enacted particular regulations covering this exemption, but its basic interpretations of the related exemptions for cotton ginning and sugar processing are located in 29 CFR, part 780, subpart I.

References:

29 U.S.C. 213(h)

20u01 Scope of exemption; 10-48 rule.

(a) Eligible employees.

Employees are eligible if they are employed exclusively to provide services necessary and incidental to:

- (1) Ginning cotton (see FOH 20v) in an establishment primarily engaged in doing so;
- (2) Receiving, handling, and storing raw cotton and compressing raw cotton when performed at a cotton warehouse or compress-warehouse facility (other than one operated in conjunction with a cotton mill) primarily engaged in storing and compressing;
- (3) Receiving, handling, storing, and processing cottonseed in an establishment primarily engaged in doing so; or

(4) Processing sugar cane or sugar beets (see FOH 20u) in an establishment primarily engaged in doing so.

(b) Limited to fourteen weeks.

The employer may claim the exemption for no more than 14 workweeks in a calendar year.

(c) 10-48 rule.

During the 14-week exemption period, the employee must receive for employment that exceeds 10 hours in a workday and exceeds 48 hours in a workweek compensation at no less than 1½ times the employee's regular rate of pay.

(d) Employer may not claim other exemptions.

An employer that claims this exemption may not claim another exemption to the Act's minimum wage or overtime requirements.

References:

29 U.S.C. 213(h)

(e) "Necessary and incidental" defined.

The ordinary meaning of "necessary and incidental" indicates something narrower than "engaged in." Employees are not eligible for the exemption if they are engaged in duties that are not necessary to the appropriate work, but those employees may be exempt under the independent exemptions for cotton ginning and sugar processing.

References:

29 U.S.C. 213(h)

29 U.S.C. (i)–(j)

Sandifer v. U.S. Steel Corp., 571 U.S. 220 (2014)

20u02 **(Reserved).**

20u03 **(Reserved).**

20v **COTTON GINNING: FLSA SECTION 13(i)**

20v00 **Requirements of exemption**

(a) Exemption generally.

FLSA section 13(i) partially exempts from the Act's overtime requirements employees engaged in the ginning of cotton for market in certain counties. WHD's basic interpretations of this exemption are located in 29 CFR, part 780, subpart I.

(b) Eligible employees.

(1) Employees are eligible for the exemption if they are:

a. Engaged in ginning cotton for market and

- b. Employed in a place located in a county where cotton is grown in commercial quantities.
- (2) Unlike the cotton ginning exemption available under Section 13(h), the employee does not need to be employed in an establishment primarily engaged in ginning cotton. Only the county of employment matters.

(c) Employee's duties, not employer's identity.

The exemption applies to employees engaged in ginning of cotton and does not depend on the employer.

References:

29 U.S.C. 213(i)

[29 CFR 780.808](#)

20v01 Limits of exemption; 10-48 rule.

- (a) The employer may claim the exemption for no more than fourteen workweeks in a consecutive 52-week period. The employer may not have overlapping 52-week periods.
- (b) During the 14-week exemption period, the employee must receive for employment that exceeds 10 hours in a workday and exceeds 48 hours in a workweek compensation at no less than 1½ times the employee's regular rate of pay.

References:

29 U.S.C. 213(i)

20v02 Cotton ginning.

(a) Defined.

Cotton ginning refers to operations performed on seed cotton—that is, cotton in its natural state—to separate the seeds from the spinnable fibers. It is the first processing of the seed cotton, which converts it into the marketable product commonly known as lint cotton by removing the seed from the lint and then pressing and wrapping the lint into bales.

References:

[29 CFR 780.804](#)

(b) Processes not included in cotton ginning.

- (1) The exemption applies to the first processing of the cotton, in its natural form, into lint cotton for market. It does not include further operations that may be performed on the cottonseed or the cotton lint, even if those operations take place in the same establishment where the ginning takes place.
- (2) Only ginning cotton is exempt. Ginning other commodities is not.
- (3) Reconditioning cotton waste resulting from spinning or oil mill operations is not exempt.

- (4) The cotton, seed cotton, and lint cotton described above do not include “linter” or “Grabbot” cotton, obtained by re-ginning cottonseed and hard locks of cotton mixed with hulls, bolls, and other substances which could not be removed by ordinary ginning.
- (5) Mote ginning is not exempt unless it is done as a part of the whole ginning process in one gin establishment as a continuous and uninterrupted series of operations resulting in useful cotton products including the regular “gin” bales, the “mote” bales (short-fiber cotton), and the cottonseed.

References:

[29 CFR 780.805–780.806](#)

20v03 Cotton must be ginned for market.

The exemption applies only when the cotton ginning is for market. Cotton is not ginned for market if it is being ginned preliminary to further processing operations performed on the cotton by the same employer before marketing it in an altered form.

References:

[29 CFR 780.807](#)

20v04 Ginning activities.

These activities are included within 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 re-parking 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.

References:

[29 CFR 780.809](#)

20v05 Non-ginning activities.

These activities are not ginning of cotton:

- (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.”

References:

[29 CFR 780.810](#)

20v06 Counties where cotton is grown in commercial quantities.

- (a) The exemption applies to those employed in a county where cotton is grown in commercial quantities. It does not require that the employer gin cotton in commercial quantities, that cotton be ginned in the county in commercial quantities, the employer be primarily engaged in ginning cotton, or the cotton being ginned be grown in the county.
- (b) The FLSA does not define “commercial quantities,” so it takes its ordinary meaning, but there is generally little question in most instances as to whether commercial quantities of cotton are grown in the county where the ginning is done.
- (c) “County” includes political units equivalent to the common definition, such as a Louisiana parish.

References:

[29 CFR 780.811–780.814](#)

Sandifer v. U.S. Steel Corp., 571 U.S. 220 (2014)

20w SUGAR PROCESSING: FLSA SECTIONS 13(b)(15) AND 13(j)

20w00 Exemptions generally.

- (a) FLSA section 13(b)(15) exempts from the Act’s overtime requirements employees engaged in processing maple sap into sugar or syrup. FLSA section 13(j) partially exempts from the Act’s overtime requirements employees engaged in processing sugar beets, sugar beet molasses, or sugar cane into sugar or syrup.

- (b) WHD's basic interpretations of these exemptions are located in 29 CFR, part 780, subpart I. The regulations have not been updated since the FLSA was amended to separate sugar beet, sugar beet molasses, and sugar cane processing from maple-sap processing, leaving only the latter in section 13(b)(15). However, the principles of the regulations continue to apply to all covered commodities.

20w01 Requirements and limits of exemptions; 10-48 rule.

(a) Eligible employees.

- (1) An employer may claim the exemption for employees who are engaged in processing sugar beets, sugar beet molasses, sugar cane, or maple sap into sugar (other than refined sugar) or syrup.
- (2) The exemption applies to employees engaged in processing the particular items and does not depend on the employer.
- (3) Unlike the sugar processing exemption available under Section 13(h), the employee does not need to be employed in an establishment primarily engaged in processing sugar cane or sugar beets.

References:

29 U.S.C. 213(j)

[29 CFR 780.808](#)

(b) Limited to specific commodities.

Only sugar beets, sugar-beet molasses, sugarcane, and maple sap qualify for the exemption. Other commodities do not qualify even though they result in the production of unrefined sugar or syrup. For example, sorghum cane or refinery syrup (which is a byproduct of refined syrup) are not named commodities, and employees engaged in processing these products are not exempt. Similarly, the exemption would not apply to employees engaged in processing sugar, glucose, or ribbon cane syrup into syrup.

References:

[29 CFR 780.816](#)

(c) Limits of sugar beet and sugar cane exemption; 10-48 rule.

- (1) If engaged in processing sugar beets, sugar-beet molasses, or sugarcane, the employer may claim the exemption for no more than fourteen workweeks in a consecutive 52-week period. The employer may not have overlapping 52-week periods.
- (2) During the 14-week exemption period, an employee so engaged must receive for employment that exceeds 10 hours in a workday and exceeds 48 hours in a workweek compensation at no less than 1½ times the employee's regular rate of pay.
- (3) These limits do not apply to employees engaged in processing maple sap.

20w02 Activities constituting processing.

(a) These activities are considered to be part of processing sugarcane:

- (1) Loading of the sugarcane in the field or at a concentration point and hauling the cane to the mill, if performed by employees of the mill.
- (2) Weighing, unloading, and stacking the cane at the mill yard.
- (3) Performing sampling tests (such as a trash test or sucrose content test) on the incoming cane.
- (4) Washing the cane, feeding it into the mill crushers, and crushing.
- (5) Operations on the extracted cane juice in the making of raw sugar and molasses: juice weighing and measurement, heating, clarification, filtration, evaporating, crystallization, centrifuging, and handling and storing the raw sugar or molasses at the plant during the grinding season.
- (6) Laboratory analytical and testing operations at any point in the processing or at the end of the process.
- (7) Loading out raw sugar or molasses during the grinding season.
- (8) Handling, baling, or storing bagasse during the grinding season.
- (9) Firing boilers and other activities connected with the overall operation of the plant machinery during grinding operations, including cleanup and maintenance work and day-to-day repairs.

References:

[29 CFR 780.817](#)

(b) These operations are considered part of processing sugar beets:

- (1) Receiving the sugar beets at the factory site or at receiving stations operated by the beet sugar factory;
- (2) Transporting the beets from those receiving stations to the factory, when performed by employees of the processor;
- (3) Producing sugar from the beets and further extracting sugar from the sugar beet molasses by mixing and concurrently processing the molasses with the beet juice obtained directly from the sugar beets;
- (4) These operations, when performed by employees of the processor on or near the premises of the beet sugar plant while the sugar beets are being received at the factory or are being processed into sugar:
 - a. Powdering sugar;
 - b. Compressing and artificially drying wet beet pulp;

- c. Weighing, handling, packaging, bagging, and storing sugar, wet beet pulp, dried beet pulp, and molasses;
- d. Removing these products from the premises and placing them in transportation facilities; and
- e. Testing equipment, performing maintenance and repairs, etc.

20w03 Non-processing activities.

These activities are not considered integral to processing and are not exempt:

- (a) Office and general clerical work.
- (b) Feeding and housing mill hands and visitors.
- (c) Hauling raw sugar or molasses away from the mill.
- (d) Any work outside the grinding season.

References:

[29 CFR 780.818](#)

20w04 Production must be of unrefined sugar or syrup.

The exemption is specifically limited to the production of sugar (other than refined sugar) or syrup. Thus, the exemption does not apply to the manufacture of sugar that is produced by melting sugar, purifying the melted sugar solution through a carbon medium process and the recrystallization of the sugar from this solution. Nor does the exemption apply to the processing of cane syrup into refined sugar or to the further processing of sugar, as for example, beet sugar into powdered or liquid sugar.

References:

[29 CFR 780.819](#)