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EXEMPT OPERATIONS ON FRUITS OR VEGETABLES

§ 780.906 Requisites for exemption generally.

Section 13(b)(16), in clause (A), provides an exemption from the overtime pay provision of the Act for an employee during any workweek in which all the following conditions are satisfied:

(a) The employee must be engaged ''in the transportation and preparation for transportation of fruits and vegetables''; and

(b) Such transportation must be transportation ''from the farm''; and

(c) The destination to which the fruits or vegetables are transported must be ''a place of first processing or first marketing''; and

(d) The transportation must be from the farm to such destination ''within the same State''.

§ 780.907 "Fruits or vegetables."

The exempt operations of preparing for transportation and transporting must be performed with respect to ''fruits or vegetables.'' The intent of section 13(b)(16) is to exempt such operations on fruits or vegetables which are ''just-harvested'' and still in their raw and natural state. As explained at the time of adoption of the amendment on the floor of the House, the exemption was intended to eliminate the difference in treatment of farmers and nonfarmers with respect to exemption of such ''handling or hauling of fruit or vegetables in their raw or natural state.'' (See 107 Cong. Rec. (daily ed.) p. 4523.) Transporting and preparing for transportation other farm products which are not fruits or vegetables are not exempt under section 13(b)(16). For example, operations on livestock, eggs, tobacco, or poultry are nonexempt. Sugarcane is not a fruit or vegetable for purposes of this exemption (*Wirtz* v. *Osceola Farms Co.*, 372 F. 2d 584).

§ 780.908 Relation of employee's work to specified transportation.

In order for the exemption to apply to an employee, he must be engaged ''in the transportation and preparation for transportation'' of the just-harvested fruits or vegetables from the farm to the specified places within the same State. Engagement in other activities is not exempt work. The employee must be actually engaged in the described operations. The exemption is not available for other employees of the employer, such as office, clerical, and maintenance workers.

§ 780.909 "Transportation."

''Transportation,'' as used in section 13(b)(16), refers to the movement by any means of conveyance of fruits or vegetables from the farm to a place of first processing or first marketing in the same State. It includes only those activities which are immediately necessary to move the fruits or vegetables to the specified points and the return trips. Drivers, drivers' helpers, loaders, and checkers perform work which is exempt. Transportation ends with delivery at the receiving platform of the place to which the fruits or vegetables are transported. (*Mitchell* v. *Budd*, 350 U.S. 473.) Thus, unloading at the delivery point by employees who did not transport the commodities would not be a part of the transportation activities under section 13(b)(16).

§ 780.910 Engagement in transportation and preparation.

Since transportation and preparation for transportation are both exempt activities, an employee who engages in both is performing exempt work. In referring to ''the transportation and preparation for transportation'' of the fruits or vegetables, the statute recognizes the two activities as interrelated parts of the single task of moving the commodities from the farm to the designated points. Accordingly, the word ''and'' between the words ''transportation'' and ''preparation'' is not considered to require that any employee be employed in both parts of the task in order to be exempt. The exemption may apply to an employee engaged either in transporting or preparing the commodities for transportation if he otherwise qualifies under section 13(b)(16).

§ 780.911 Preparation for transportation.

The ''preparation for transportation'' of fruits or vegetables includes only