

§ 780.154

on a farm as an incident to or in conjunction with such farming operations” does not preclude the inclusion of “delivery to storage” within section 3(f). The same is true with respect to “delivery to market” and “delivery to carriers for transportation to market.”

§ 780.154 Delivery “to market.”

The term “delivery * * * to market” includes taking agricultural or horticultural commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, or poultry to market. It ordinarily refers to the initial journey of the farmer’s products from the farm to the market. The market referred to is the farmer’s market which normally means the distributing agency, cooperative marketing agency, wholesaler or processor to which the farmer delivers his products. Delivery to market ends with the delivery of the commodities at the receiving platform of such a farmer’s market (*Mitchell v. Budd*, 350 U.S. 473). When the delivery involves travel off the farm (which would normally be the case) the delivery must be performed by the employees employed by the farmer in order to constitute an agricultural practice. Delivery by an independent contractor for the farmer or a group of farmers or by a “bird-dog” operator who has purchased the commodities on the farm from the farmer is not an agricultural practice (see *Chapman v. Durkin*, 214 F. 2d 360, cert. denied 348 U.S. 897; *Fort Mason Fruit Co. v. Durkin*, 214 F. 2d 363, cert. denied 348 U.S. 897). However, in the case of fruits or vegetables, the Act provides a special overtime pay exemption for intrastate transportation of the freshly harvested commodities from the farm to a place of first marketing or first processing, which may apply to employees engaged in such transportation regardless of whether they are employed by the farmer. See subpart J of this part 780, discussing the exemption provided by section 13(b)(16).

§ 780.155 Delivery “to carriers for transportation to market.”

The term “delivery * * * to carriers for transportation to market” includes taking agricultural or horticultural commodities, dairy products, live-

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stock, bees or their honey, fur-bearing animals or their pelts, and poultry to any carrier (including carriers by truck, rail, water, etc.) for transportation by such carrier to market. The market referred to is the farmer’s market which normally means the distributing agency, cooperative marketing agency, wholesaler, or processor to which the farmer delivers his products. As in the case of “delivery to market,” when it involves travel off the farm (as would normally be the case) the delivery must be performed by the farmer’s own employees in order to constitute an agricultural practice. Employees of the carrier who transport to market the commodities which are delivered to it are not within the scope of agriculture.

TRANSPORTATION OPERATIONS NOT MENTIONED IN SECTION 3(f)

§ 780.156 Transportation of farm products from the fields or farm.

Transportation of farm products from the fields where they are grown or from the farm to other places may be within the “secondary” meaning of agriculture, regardless of whether the transportation is included as “delivery to storage or to market or to carriers for transportation to market”: *Provided only*, That it is performed by a farmer or on a farm as an incident to or in conjunction with the farming operations of that farmer or that farm. Of course, any transportation operations which are part of, and not subsequent to, the “primary” farming operations are also within section 3(f). These principles have been recognized by the courts in the following cases, among others: *Maneja v. Waiialua*, 349 U.S. 254; *NLRB v. Olat Sugar Co.*, 242 F. 2d 714; *Bowie v. Gonzales*, 117 F. 2d 11; *Calaf v. Gonzales*, 127 F. 8d 934; *Vives v. Serralles*, 145 F. 2d 552; *Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 398. If not performed by the farmer, transportation beyond the limits of the farm is not within section 3(f), even when performed by a purchaser of the unharvested commodities who has harvested the crop. The scope of section 3(f) includes the harvesting employees but does not extend to the employees transporting the commodities off the farm (*Chapman v. Durkin*,

214 F. 2d 360, cert. denied, 348 U.S. 897; *Fort Mason Fruit Co. v. Durkin*, 214 F. 2d 363, cert. denied, 348 U.S. 897).

§ 780.157 Other transportation incident to farming.

(a) Transportation by a farmer or on a farm as an incident to or in conjunction with the farming operations of the farmer or of that farm is within the scope of agriculture even though things other than farm commodities raised by the farmer or on the farm are being transported. As previously indicated, transportation of commodities raised by other farmers or on other farms would not be within section 3(f). The definition of agriculture clearly covers the transportation by the farmer, as an incident to or in conjunction with his farming activities, of farm implements, supplies, and fieldworkers to and from the fields, regardless of whether such transportation involves travel on or off the farm and regardless of the method used. The Supreme Court of the United States so held in *Maneja v. Waialua*, 349 U.S. 254. Transportation of fieldworkers to or from the farm by persons other than the farmer does not come within section 3(f). However, under section 13(b)(16) of the Act, discussed in subpart J of this part 780, an overtime pay exemption is provided for transportation, whether or not performed by the farmer, of fruit or vegetable harvest workers to and from the farm, within the same State where the farm is located. In the case of transportation to the farm of materials or supplies, it seems clear that transportation to the farm by the farmer of materials and supplies for use in his farming operations, such as seed, animal or poultry feed, farm machinery or equipment, etc., would be incidental to the farmer's actual farming operations. Thus, truckdrivers employed by a farmer to haul feed to the farm for feeding pigs are engaged in "agriculture."

(b) With respect to the practice of transporting farm products from farms to a processing establishment by employees of a person who owns both the farms and the establishment, such practice may or may not be incidental to or in conjunction with the employer's farming operations depending on all

the pertinent facts. For example, the transportation is clearly incidental to milling operations, rather than to farming, where the employees engaged in it are hired by the mill, carried on its payroll, do no agricultural work on the farms, and report for and end their daily duties at the mill where the transportation vehicles are kept (*Calaf v. Gonzales*, 127 F. 2d 934). On the other hand, a different result is reached where the facts show that the transportation workers are farm employees whose work is closely integrated with harvesting and other direct farming operations (*NLRB v. Olat Sugar Co.*, 242 F. 2d 714; and see *Vives v. Serralles*, 145 F. 2d 552). The method by which the transportation is accomplished is not material (*Maneja v. Waialua*, 349 U.S. 254).

OTHER UNLISTED PRACTICES WHICH MAY BE WITHIN SECTION 3(f)

§ 780.158 Examples of other practices within section 3(f) if requirements are met.

(a) As has been noted above, the term "agriculture" includes other practices performed by a farmer or on a farm as an incident to or in conjunction with the farming operations conducted by such farmer or on such farm in addition to the practices listed in section 3(f). The selling (including selling at roadside stands or by mail order and house to house selling) by a farmer and his employees of his agricultural commodities, dairy products, etc., is such a practice provided it does not amount to a separate business. Other such practices are office work and maintenance and protective work. Section 3(f) includes, for example, secretaries, clerks, bookkeepers, night watchmen, maintenance workers, engineers, and others who are employed by a farmer or on a farm if their work is part of the agricultural activity and is subordinate to the farming operations of such farmer or on such farm. (*Damutz v. Pinchbeck*, 66 F. Supp. 667, aff'd. 158 F. 2d 882). Employees of a farmer who repair the mechanical implements used in farming, as a subordinate and necessary task incidental to their employer's farming operations, are within section 3(f). It makes no difference that the work is done by a separate labor force in a repair shop maintained for the purpose,