

§ 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-

29 CFR Ch. V (7–1–13 Edition)

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. Waialua*, 349 U.S. 254; *NLRB v. Olaa 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*,