

§ 780.132 Operations must be performed “by” a farmer.

“Farmer” includes the employees of a farmer. It does not include an employer merely because he employs a farmer or appoints a farmer as his agent to do the actual work. Thus, the stripping of tobacco, i.e., removing leaves from the stalk, by the employees of an independent warehouse is not a practice performed “by a farmer” even though the warehouse acts as agent for the tobacco farmer or employs the farmer in the stripping operations. One who merely performs services or supplies materials for farmers in return for compensation in money or farm products is not a “farmer.” Thus, a person who provides credit and management services to farmers cannot qualify as a “farmer” on that account. Neither can a repairman who repairs and services farm machinery qualify as a “farmer” on that basis. Where crops are grown under contract with a person who provides a market, contributes counsel and advice, make advances and otherwise assists the grower who actually produces the crop, it is the grower and not the person with whom he contracts who is the farmer with respect to that crop (*Mitchell v. Huntsville Nurseries*, 267 F. 2d 286).

§ 780.133 Farmers’ cooperative as a “farmer.”

(a) The phrase “by a farmer” covers practices performed either by the farmer himself or by the farmer through his employees. Employees of a farmers’ cooperative association, however, are employed not by the individual farmers who compose its membership or who are its stockholders, but by the cooperative association itself. Cooperative associations whether in the corporate form or not, are distinct, separate entities from the farmers who own or compose them. The work performed by a farmers’ cooperative association is not work performed “by a farmer” but for farmers. Therefore, employees of a farmers’ cooperative association are not generally engaged in any practices performed “by a farmer” within the meaning of section 3(f) (*Farmers Reservoir Co. v. McComb*, 337 U.S. 755; *Goldberg v. Crowley Ridge Ass’n.*, 295 F. 2d 7; *McComb v. Puerto Rico Tobacco Mar-*

keting Co-op Ass’n., 80 F. Supp. 953, 181 F. 2d 697). The legislative history of the Act supports this interpretation. Statutes usually cite farmers’ cooperative associations in express terms if it is intended that they be included. The omission of express language from the Fair Labor Standards Act is significant since many unsuccessful attempts were made on the floor of Congress to secure special treatment for such cooperatives.

(b) It is possible that some farmers’ cooperative associations may themselves engage in actual farming operations to an extent and under circumstances sufficient to qualify as a “farmer.” In such case, any of their employees who perform practices as an incident to or in conjunction with such farming operations are employed in “agriculture.”

PRACTICES PERFORMED “ON A FARM”

§ 780.134 Performance “on a farm” generally.

If a practice is not performed by a farmer, it must, among other things, be performed “on a farm” to come within the secondary meaning of “agriculture” in section 3(f). Any practice which cannot be performed on a farm, such as “delivery to market,” is necessarily excluded, therefore, when performed by someone other than a farmer (see *Farmers Reservoir Co. v. McComb*, 337 U.S. 755; *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). Thus, employees of an alfalfa dehydrator engaged in hauling chopped or unchopped alfalfa away from the farms to the dehydrating plant are not employed in a practice performed “on a farm.”

§ 780.135 Meaning of “farm.”

A “farm” is a tract of land devoted to the actual farming activities included in the first part of section 3(f). Thus, the gathering of wild plants in the woods for transplantation in a nursery is not an operation performed “on a farm.” (For a further discussion, see § 780.207.) The total area of a tract operated as a unit for farming purposes is included in the “farm,” irrespective of the fact that some of this area may