

## § 780.912

### § 780.912 Exempt preparation.

The following operations, if required in order to move the commodities from the farm and to deliver them to a place of first marketing or first processing, are considered preparation for transportation: Assembling, weighing, placing the fruits or vegetables in containers such as lugs, crates, boxes or bags, icing, marking, labeling or fastening containers, and moving the commodities from storage or concentration areas on the farm to loading sites.

### § 780.913 Nonexempt preparation.

(a) *Retail packing.* Since the exemption, as expressly stated in section 13(b)(16), includes the transportation of the fruits or vegetables only to places of first marketing or first processing, packing or preparing for retail or further distribution beyond the place of first processing or first marketing is not exempt as "preparation for transportation." (*Schultz v. Durrence* (D. Ga.), 19 WH Cases 747, 63 CCH Lab. Cas. secs. 32, 387.)

(b) *Preparation for market.* No exemption is provided under section 13(b)(16) for operations performed on the farm in preparation for market (such as ripening, cleaning, grading, or sorting) rather than in preparation for the transportation described in the section. Exemption, if any, for these activities should be considered under sections 13(a)(6) and 13(b)(12). (See subparts D and E of this part 780.)

(c) *Processing or canning.* Processing is not exempt preparation for transportation. Thus, the canning of fruits or vegetables is not under section 13(b)(16).

### § 780.914 "From the farm."

The exemption applies only to employees whose work relates to transportation of fruits or vegetables "from the farm." The phrase "from the farm" makes it clear that the preparation of the fruits or vegetables should be performed on the farm and that the first movement of the commodities should commence at the farm. A "farm" has been interpreted under the Act to mean a tract of land devoted to one or more of the primary branches of farming outlined in the definition of "agri-

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culture" in section 3(f) of the Act. These expressly include the cultivation and tillage of the soil and the growing and harvesting of any agricultural or horticultural commodities.

### § 780.915 "Place of first processing."

Under section 13(b)(16) the fruits or vegetables may be transported to only two types of places. One is a "place of first processing", which includes any place where canning, freezing, drying, preserving, or other operations which first change the form of the fresh fruits or vegetables from their raw and natural state are performed. (For overtime exemption applicable to "first processing," see part 526 of this chapter.) A plant which grades and packs only is not a place of first processing (*Walling v. DeSoto Creamery and Produce Co.*, 51 F. Supp. 938). However, a packer's plant may qualify as a place of first marketing. (See § 780.916.)

### § 780.916 "Place of \* \* \* first marketing."

A "place of \* \* \* first marketing" is the second of the two types of places to which the freshly harvested fruits or vegetables may be transported from the farm under the exemption provided by section 13(b)(16). Typically, a place of first marketing is a farmer's market of the kind to which "delivery to market" is made within the meaning of section 3(f) of the Act when a farmer delivers such commodities there as an incident to or in conjunction with his own farming operations. Under section 13(b)(16), of course, there is no requirement that the transportation be performed by or for a farmer or as an incident to or in conjunction with any farming operations. A place of first marketing may be described in general terms as a place at which the freshly harvested fruits or vegetables brought from the farm are first delivered for marketing, such as a packing plant or an establishment of a wholesaler or other distributor, cooperative marketing agency, or processor to which the fruits or vegetables are first brought from the farm and delivered for sale. A place of first marketing may also be a place of first processing (see *Mitchell v. Budd*, 350 U.S. 473) but it

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need not be. The “first place of packing” to which the just-harvested fruits or vegetables are transported from the farm is intended to be included. (See 107 Cong. Rec. (daily ed.) p. 4523.) Transportation to places which are not first processing or first marketing places is not exempt.

### § 780.917 “Within the same State.”

To qualify for exemption under section 13(b)(16), the transportation of the fruits or vegetables must be made to the specified places “within the same State” in which the farm is located. Transportation is made to a place “within the same State” when the commodities are taken from the farm, hauled and delivered within the same State to first markets or first processors for sale or processing at the place of delivery. The exemption is not provided for transportation to any place of first marketing or first processing across State lines and does not apply to any part of the transportation within the State of fruits or vegetables destined for a place in another State at which they are to be first marketed or first processed. Transportation from the farm to an intermediate point in such a journey located within the same State would not qualify for exemption; it would make no difference that the intermediate point is a place of first marketing or first processing for other fruits or vegetables if it is not actually such for the fruits or vegetables being transported. On the other hand, where the place to which fruits or vegetables are transported from the farm within the same State is actually the place of first marketing or first processing of those very commodities, transportation of the goods across State lines by the first-market operator or first processor, after such delivery to him within the State, does not affect the nature of the delivery to him as one made within the State.

#### EXEMPT TRANSPORTATION OF FRUIT OR VEGETABLE HARVEST EMPLOYEES

### § 780.918 Requisites for exemption generally.

Section 13(b)(16), in clause (B), provides an exemption from the minimum wage and overtime pay provisions of

the Act for an employee during any workweek in which all the following conditions are satisfied:

(a) The employee must be engaged “in transportation” of harvest workers; and

(b) The harvest workers transported must be “persons employed or to be employed in the harvesting of fruits or vegetables”; and

(c) The employee’s transportation of such harvest workers must be “between the farm and any point within the same State.”

### § 780.919 Engagement “in transportation” of harvest workers.

In order for the exemption to apply, the employees must be engaged “in transportation” of the specified harvest workers between the points stated in the statute. Actual engagement “in transportation” of such workers is required. Engagement in other activities is not exempt work. Drivers, driver’s helpers, and others who are engaged in the actual movement of the persons transported may qualify for the exemption. Office employees, garage mechanics, and other employees of the employer who may perform supporting activities but do not engage in the actual transportation work do not come within the exemption. There is no restriction in the statute as to the means of conveyance used; the exempt transportation may be by land, air, or water in any vehicle or conveyance appropriate for the purpose. Employees of any employer who are engaged in the specified transportation activities may qualify for exemption; it is not necessary that the transportation be performed by the farmer. (See § 780.905.)

### § 780.920 Workers transported must be fruit or vegetable harvest workers.

Clause (B) of section 13(b)(16) exempts only those transportation employees who are engaged in transportation “of persons employed or to be employed in the harvesting of fruits or vegetables.” Transportation of harvest workers is not exempt unless the workers are fruit and vegetable harvest workers; transportation of workers employed or to be employed in harvesting or other commodities is not exempt work under section 13(b)(16). *Wirtz v.*