

## Wage and Hour Division, Labor

## § 780.920

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.*