

Wage and Hour Division, Labor

§ 780.136

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 Marketing 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 not be utilized for actual farming operations (see *NLRB v. O’ala Sugar Co.*, 242 F. 2d 714; *In re Princeville Canning Co.*, 14 WH Cases 641 and 762). It is immaterial whether a farm is situated in the city or in the country. However, a place in a city where no primary farming operations are performed is not a farm even if operated by a farmer (*Mitchell v. Huntsville Nurseries*, 267 F. 2d 286).

§ 780.136 Employment in practices on a farm.

Employees engaged in building terraces or threshing wheat and other grain, employees engaged in the erection of silos and granaries, employees engaged in digging wells or building dams for farm ponds, employees engaged in inspecting and culling flocks