

29 C.F.R. § 780.140

Place of performing the practice as a factor.

So long as the farming operations to which a farmer's practice pertains are performed by him in his capacity as a farmer, the status of the practice is not necessarily altered by the fact that the farming operations take place on more than one farm or by the fact that some of the operations are performed off his farm (*NLRB v. Olat Sugar Co.*, 242 F. 2d 714). Thus, where the practice is performed with respect to products of farming operations, the controlling consideration is whether the products were produced by the farming operations of the farmer who performs the practice rather than at what place or on whose land he produced them. Ordinarily, a practice performed by a farmer in connection with farming operations conducted on land which he owns or leases will be considered as performed in connection with the farming operations of such farmer in the absence of facts indicating that the farming operations are actually those of someone else. Conversely, a contrary conclusion will ordinarily be justified if such farmer is not the owner or a bona fide lessee of such land during the period when the farming operations take place. The question of whose farming operations are actually being conducted in cases where they are performed pursuant to an agreement or arrangement, not amounting to a bona fide lease, between the farmer who performs the practice and the landowner necessarily involves a careful scrutiny of the facts and circumstances surrounding the arrangement. Where commodities are grown on the farm of the actual grower under contract with another, practices performed by the latter on the commodities, off the farm where they were grown, relate to farming operations of the grower rather than to any farming operations of the contract purchaser. This is true even though the contract purports to lease the land to the latter, give him the title to the crop at all times, and confer on him the right to supervise the growing operations, where the facts as a whole show that the contract purchaser provides a farm market, cash advances, and advice and counsel but does not really perform growing operations (*Mitchell v. Huntsville Nurseries*, 267 F. 2d 286).

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