

Wage and Hour Division, Labor

§ 780.105

and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

§ 780.104 How modern specialization affects the scope of agriculture.

The effect of modern specialization on agriculture has been discussed by the U.S. Supreme Court as follows:

Whether a particular type of activity is agricultural depends, in large measure, upon the way in which that activity is organized in a particular society. The determination cannot be made in the abstract. In less advanced societies the agricultural function includes many types of activity which, in others, are not agricultural. The fashioning of tools, the provision of fertilizer, the processing of the product, to mention only a few examples, are functions which, in some societies, are performed on the farm by farmers as part of their normal agricultural routine. Economic progress, however, is characterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. In this way functions which are necessary to the total economic process of supplying an agricultural produce become, in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it. Thus the question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity. The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. But the maintenance man in a powerplant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done by farmers. The production

of power and the manufacture of fertilizer are independent productive functions, not agriculture (see *Farmers Reservoir Co. v. McComb*, 337 U.S. 755 cf. *Maneja v. Waiialua*, 349 U.S. 254).

§ 780.105 "Primary" and "secondary" agriculture under section 3(f).

(a) Section 3(f) of the Act contains a very comprehensive definition of the term "agriculture." The definition has two distinct branches (see *Farmers Reservoir Co. v. McComb*, 337 U.S. 755). One has relation to the primary meaning of agriculture; the other gives to the term a somewhat broader secondary meaning for purposes of the Act (*NLRB v. Olaa Sugar Co.*, 242 F. 2d 714).

(b) First, there is the primary meaning. This includes farming in all its branches. Listed as being included "among other things" in the primary meaning are certain specific farming operations such as cultivation and tillage of the soil, dairying the production, cultivation, growing and harvesting of any agricultural or horticultural commodities and the raising of livestock, bees, fur-bearing animals or poultry. If an employee is employed in any of these activities, he is engaged in agriculture regardless of whether he is employed by a farmer or on a farm. (*Farmers Reservoir Co. v. McComb*, supra; *Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 398.)

(c) Then there is the secondary meaning of the term. The second branch includes operations other than those which fall within the primary meaning of the term. It includes any practices, whether or not they are themselves farming practices, which are performed either by a farmer or on a farm as an incident to or in conjunction with "such" farming operations (*Farmers Reservoir Co. v. McComb*, supra; *NLRB v. Olaa Sugar Co.*, 242 F. 2d 714; *Maneja v. Waiialua*, 349 U.S. 254).

(d) Employment not within the scope of either the primary or the secondary meaning of "agriculture" as defined in section 3(f) is not employment in agriculture. In other words, employees not employed in farming or by a farmer or on a farm are not employed in agriculture.

§ 780.106

EXEMPTION FOR "PRIMARY" AGRICULTURE GENERALLY

§ 780.106 Employment in "primary" agriculture is farming regardless of why or where work is performed.

When an employee is engaged in direct farming operations included in the primary definition of "agriculture," the purpose of the employer in performing the operations is immaterial. For example, where an employer owns a factory and a farm and operates the farm only for experimental purposes in connection with the factory, those employees who devote all their time during a particular workweek to the direct farming operations, such as the growing and harvesting of agricultural commodities, are considered as employed in agriculture. It is also immaterial whether the agricultural or horticultural commodities are grown in enclosed houses, as in greenhouses or mushroom cellars, or in an open field. Similarly, the mere fact that production takes place in a city or on industrial premises, such as in hatcheries, rather than in the country or on premises possessing the normal characteristics of a farm makes no difference (see *Jordan v. Stark Brothers Nurseries*, 45 F. Supp. 769; *Miller Hatcheries v. Boyer*, 131 F. 2d 283; *Damutz v. Pinchbeck*, 158 F. 2d 882).

FARMING IN ALL ITS BRANCHES

§ 780.107 Scope of the statutory term.

The language "farming in all its branches" includes all activities, whether listed in the definition or not, which constitute farming or a branch thereof under the facts and circumstances.

§ 780.108 Listed activities.

Section 3(f), in defining the practices included as "agriculture" in its statutory secondary meaning, refers to the activities specifically listed in the earlier portion of the definition (the "primary" meaning) as "farming" operations. They may therefore be considered as illustrative of "farming in all its branches" as used in the definition.

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§ 780.109 Determination of whether unlisted activities are "farming."

Unlike the specifically enumerated operations, the phrase "farming in all its branches" does not clearly indicate its scope. In determining whether an operation constitutes "farming in all its branches," it may be necessary to consider various circumstances such as the nature and purpose of the operations of the employer, the character of the place where the employee performs his duties, the general types of activities there conducted, and the purpose and function of such activities with respect to the operations carried on by the employer. The determination may involve a consideration of the principles contained in § 780.104. For example, fish farming activities fall within the scope of the meaning of "farming in all its branches" and employers engaged in such operations would be employed in agriculture. On the other hand, so-called "bird dog" operations of the citrus fruit industry consisting of the purchase of fruit unsuitable for packing and of the transportation and sale of the fruit to canning plants do not qualify as "farming" and, consequently, employees engaged in such operations are not employed in agriculture. (See *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.) However, employees gathering the fruit at the groves are considered agricultural workers because they are engaged in harvesting operations. (For exempt transportation, see subpart J of this part.)

CULTIVATION AND TILLAGE OF THE SOIL

§ 780.110 Operations included in "cultivation and tillage of the soil."

"Cultivation and tillage of the soil" includes all the operations necessary to prepare a suitable seedbed, eliminate weed growth, and improve the physical condition of the soil. Thus, grading or leveling land or removing rock or other matter to prepare the ground for a proper seedbed or building terraces on farmland to check soil erosion are included. The application of water, fertilizer, or limestone to farmland is also included. (See in this connection