

§ 780.117

29 CFR Ch. V (7-1-05 Edition)

employees. (For an explanation of the inclusion of the word "production" in section 3(f), see § 780.117(b).) It is to be noted, however, that the production of gum turpentine and gum rosin from crude gum (oleoresin) derived from a living tree is included within section 3(f) when performed at a central still for and on account of the producer of the crude gum. But where central stills buy the crude gum they process and are the owners of the gum turpentine and gum rosin that are derived from such crude gum and which they market for their own account, the production of such gum turpentine and gum rosin is not within section 3(f).

"PRODUCTION, CULTIVATION, GROWING, AND HARVESTING" OF COMMODITIES

§ 780.117 "Production, cultivation, growing."

(a) The words "production, cultivation, growing" describe actual raising operations which are normally intended or expected to produce specific agricultural or horticultural commodities. The raising of such commodities is included even though done for purely experimental purposes. The "growing" may take place in growing media other than soil as in the case of hydroponics. The words do not include operations undertaken or conducted for purposes not concerned with obtaining any specific agricultural or horticultural commodity. Thus operations which are merely preliminary, preparatory or incidental to the operations whereby such commodities are actually produced are not within the terms "production, cultivation, growing". For example, employees of a processor of vegetables who are engaged in buying vegetable plants and distributing them to farmers with whom their employer has acreage contracts are not engaged in the "production, cultivation, growing" of agricultural or horticultural commodities. The furnishing of mushroom spawn by a canner of mushrooms to growers who supply the canner with mushrooms grown from such spawn does not constitute the "growing" of mushrooms. Similarly, employees of the employer who is engaged in servicing insecticide sprayers in the farmer's orchard and employees engaged in

such operations as the testing of soil or genetics research are not included within the terms. (However, see §§ 780.128, et seq., for possible exemption on other grounds.) The word "production," used in conjunction with "cultivation, growing, and harvesting," refers, in its natural and unstrained meaning, to what is derived and produced from the soil, such as any farm produce. Thus, "production" as used in section 3(f) does not refer to such operations as the grinding and processing of sugarcane, the milling of wheat into flour, or the making of cider from apples. These operations are clearly the processing of the agricultural commodities and not the production of them (*Bowie v. Gonzalez*, 117 F. 2d 11).

(b) The word "production" was added to the definition of "agriculture" in order to take care of a special situation—the production of turpentine and gum rosins by a process involving the tapping of living trees. (See S. Rep. No. 230, 71st Cong., second sess. (1930); H.R. Rep. No. 2738, 75th Cong., third sess. p. 29 (1938).) To insure the inclusion of this process within the definition, the word "production" was added to section 3(f) in conjunction with the words "including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended" (*Bowie v. Gonzalez*, 117 F. 2d 11). It is clear, therefore, that "production" is not used in section 3(f) in the artificial and special sense in which it is defined in section 3(j). It does not exempt an employee merely because he is engaged in a closely related process or occupation directly essential to the production of agricultural or horticultural commodities. To so construe the term would render unnecessary the remainder of what Congress clearly intended to be a very elaborate and comprehensive definition of "agriculture." The legislative history of this part of the definition was considered by the U.S. Supreme Court in reaching these conclusions in *Farmers Reservoir Co. v. McComb*, 337 U.S. 755.

§ 780.118 "Harvesting."

(a) The term "Harvesting" as used in section 3(f) includes all operations customarily performed in connection with