

§ 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

the removal of the crops by the farmer from their growing position (*Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 398; *NLRB v. O'Leary Sugar Co.*, 242 F. 2d 714). Examples include the cutting of grain, the picking of fruit, the stripping of bluegrass seed, and the digging up of shrubs and trees grown in a nursery. Employees engaged on a plantation in gathering sugarcane as soon as it has been cut, loading it, and transporting the cane to a concentration point on the farm are engaged in "Harvesting" (*Vives v. Serralles*, 145 F. 2d 552).

(b) The combining of grain is exempt either as harvesting or as a practice performed on a farm in conjunction with or as an incident to farming operations. (See in this connection *Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 398.) "Harvesting" does not extend to operations subsequent to and unconnected with the actual process whereby agricultural or horticultural commodities are severed from their attachment to the soil or otherwise reduced to possession. For example, the processing of sugarcane into raw sugar (*Bowie v. Gonzalez*, 117 F. 2d 11, and see *Maneja v. Waialua*, 349 U.S. 254), or the vining of peas are not included. For a further discussion on vining employees, see § 780.139. While transportation to a concentration point on the farm may be included, "harvesting" never extends to transportation or other operations off the farm. Off-the-farm transportation can only be "agriculture" when performed by the farmer as an incident to his farming operations (*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). For further discussion of this point, see §§ 780.144 through 780.147; §§ 780.152 through 780.157.

RAISING OF LIVESTOCK, BEES, FUR-BEARING ANIMALS, OR POULTRY

§ 780.119 Employment in the specified operations generally.

Employees are employed in the raising of livestock, bees, fur-bearing animals or poultry only if their operations relate to animals of the type named and constitute the "raising" of such animals. If these two requirements are met, it makes no difference for what

purpose the animals are raised or where the operations are performed. For example, the fact that cattle are raised to obtain serum or virus or that chicks are hatched in a commercial hatchery does not affect the status of the operations under section 3(f).

§ 780.120 Raising of "livestock."

The meaning of the term "livestock" as used in section 3(f) is confined to the ordinary use of the word and includes only domestic animals ordinarily raised or used on farms. That Congress did not use this term in its generic sense is supported by the specific enumeration of activities, such as the raising of fur-bearing animals, which would be included in the generic meaning of the word. The term includes the following animals, among others: Cattle (both dairy and beef cattle), sheep, swine, horses, mules, donkeys, and goats. It does not include such animals as albino and other rats, mice, guinea pigs, and hamsters, which are ordinarily used by laboratories for research purposes (*Mitchell v. Maxfield*, 12 WH Cases 792 (S.D. Ohio), 29 Labor Cases 68, 781). Fish are not "livestock" (*Dunkly v. Erich*, 158 F. 2d 1), but employees employed in propagating or farming of fish may qualify for exemption under section 13(a)(6) or 13(b)(12) of the Act as stated in § 780.109 as well as under section 13(a)(5), as explained in part 784 of this chapter.

§ 780.121 What constitutes "raising" of livestock.

The term "raising" employed with reference to livestock in section 3(f) includes such operations as the breeding, fattening, feeding, and general care of livestock. Thus, employees exclusively engaged in feeding and fattening livestock in stock pens where the livestock remains for a substantial period of time are engaged in the "raising" of livestock. The fact that the livestock is purchased to be fattened and is not bred on the premises does not characterize the fattening as something other than the "raising" of livestock. The feeding and care of livestock does not necessarily or under all circumstances constitute the "raising" of such livestock, however. It is clear, for example, that animals are not being "raised" in