

PRACTICES PERFORMED "BY A FARMER"

§ 780.130 Performance "by a farmer" generally.

Among other things, a practice must be performed by a farmer or on a farm in order to come within the secondary portion of the definition of "agriculture." No precise lines can be drawn which will serve to delimit the term "farmer" in all cases. Essentially, however, the term is an occupational title and the employer must be engaged in activities of a type and to the extent that the person ordinarily regarded as a "farmer" is engaged in order to qualify for the title. If this test is met, it is immaterial for what purpose he engages in farming or whether farming is his sole occupation. Thus, an employer's status as a "farmer" is not altered by the fact that his only purpose is to obtain products useful to him in a non-farming enterprise which he conducts. For example, an employer engaged in raising nursery stock is a "farmer" for purposes of section 3(f) even though his purpose is to supply goods for a separate establishment where he engages in the retail distribution of nursery products. The term "farmer" as used in section 3(f) is not confined to individual persons. Thus an association, a partnership, or a corporation which engages in actual farming operations may be a "farmer" (see *Mitchell v. Budd*, 350 U.S. 473). This is so even where it operates "what might be called the agricultural analogue of the modern industrial assembly line" (*Maneja v. Waialua*, 349 U.S. 254).

§ 780.131 Operations which constitute one a "farmer."

Generally, an employer must undertake farming operations of such scope and significance as to constitute a distinct activity, for the purpose of yielding a farm product, in order to be regarded as a "farmer." It does not necessarily follow, however, that any employer is a "farmer" simply because he engages in some actual farming operations of the type specified in section 3(f). Thus, one who merely harvests a crop of agricultural commodities is not a "farmer" although his employees who actually do the harvesting are employed in "agriculture" in those weeks

when exclusively so engaged. As a general rule, a farmer performs his farming operations on land owned, leased, or controlled by him and devoted to his own use. The mere fact, therefore, that an employer harvests a growing crop, even under a partnership agreement pursuant to which he provides credit, advisory or other services, is not generally considered to be sufficient to qualify the employer so engaged as a "farmer." Such an employer would stand, in packing or handling the product, in the same relationship to the produce as if it were from the fields or groves of an independent grower. One who engaged merely in practices which are incidental to farming is not a "farmer." For example, a company which merely prepares for market, sells, and ships flowers and plants grown and cultivated on farms by affiliated corporations is not a "farmer." The fact that one has suspended actual farming operations during a period in which he performs only practices incidental to his part or prospective farming operations does not, however, preclude him from qualifying as a "farmer." One otherwise qualified as a farmer does not lose his status as such because he performs farming operations on land which he does not own or control, as in the case of a cattleman using public lands for grazing.

§ 780.132 Operations must be performed "by" a farmer.

"Farmer" includes the employees of a farmer. It does not include an employer merely because he employs a farmer or appoints a farmer as his agent to do the actual work. Thus, the stripping of tobacco, i.e., removing leaves from the stalk, by the employees of an independent warehouse is not a practice performed "by a farmer" even though the warehouse acts as agent for the tobacco farmer or employs the farmer in the stripping operations. One who merely performs services or supplies materials for farmers in return for compensation in money or farm products is not a "farmer." Thus, a person who provides credit and management services to farmers cannot qualify as a "farmer" on that account. Neither can a repairman who repairs and services farm machinery qualify as