

Wage and Hour Division, Labor

§ 780.112

§ 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

§§ 780.128 *et seq.* Also see *Farmers Reservoir Co. v. McComb*, 337 U.S. 755.) Other operations such as the commercial production and distribution of fertilizer are not included within the scope of agriculture. (*McComb v. Super-A Fertilizer Works*, 165 F. 2d 824; *Farmers Reservoir Co. v. McComb*, 337 U.S. 755.)

DAIRYING

§ 780.111 “Dairying” as a farming operation.

“Dairying” includes the work of caring for and milking cows or goats. It also includes putting the milk in containers, cooling it, and storing it where done on the farm. The handling of milk and cream at receiving stations is not included. Such operations as separating cream from milk, bottling milk and cream, or making butter and cheese may be considered as “dairying” under some circumstances, or they may be considered practices under the “secondary” meaning of the definition when performed by a farmer or on a farm, if they are not performed on milk produced by other farmers or produced on other farms. (See the discussions in §§ 780.128 *et seq.*)

AGRICULTURAL OR HORTICULTURAL COMMODITIES

§ 780.112 General meaning of “agriculture or horticultural commodities.”

Section 3(f) of the Act defines as “agriculture” the “production, cultivation, growing, and harvesting” of “agricultural or horticultural commodities,” and employees employed in such operations are engaged in agriculture. In general, within the meaning of the Act, “agricultural or horticultural commodities” refers to commodities resulting from the application of agricultural or horticultural techniques. Insofar as the term refers to products of the soil, it means commodities that are planted and cultivated by man. Among such commodities are the following: Grains, forage crops, fruits, vegetables, nuts, sugar crops, fiber crops, tobacco, and nursery products. Thus, employees engaged in growing wheat, corn, hay, onions, carrots, sugar cane, seed, or any other agricultural or horticultural commodity are engaged