

§ 780.148

is conducted as a separate business activity rather than as a part of agriculture.

PRACTICES INCLUDED WHEN PERFORMED AS PROVIDED IN SECTION 3(f)

§ 780.148 “Any” practices meeting the requirements will qualify for exemption.

The language of section 3(f) of the Act, in defining the “secondary” meaning of “agriculture,” provides that any practices performed by a farmer or on a farm as an incident to or in conjunction with such (his or its) farming operations are within the definition. The practices which may be exempt as “agriculture” if so performed are stated to include forestry or lumbering operations, preparation for market, and delivery to storage or to market or to carriers for transportation to market. The specification of these practices is illustrative rather than limiting in nature. The broad language of the definition clearly includes all practices thus performed and not merely those named (see *Maneja v. Waialua*, 349 U.S. 254).

§ 780.149 Named practices as well as others must meet the requirements.

The specific practices named in section 3(f) must, like any others, be performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, for this condition applies to “any” practices brought within the secondary meaning of agriculture as defined in that section of the Act. Thus the preparation for market, by a farmer’s employees on a farm of animals to be sold at a livestock auction is not within section 3(f) if animals from other farmers and other farms are also handled. The practice is not performed as an incident to or in conjunction with “such” farming operations, that is, the operations of the farmer by whom, or of the farm on which, the livestock is raised (*Mitchell v. Hunt*, 263 F. 2d 913).

PREPARATION FOR MARKET

§ 780.150 Scope and limits of “preparation for market.”

“Preparation for market” is also named as one of the practices which may be included in “agriculture.” The

29 CFR Ch. V (7–1–06 Edition)

term includes the operations normally performed upon farm commodities to prepare them for the farmer’s market. The farmer’s market normally means the wholesaler, processor, or distributing agency to which the farmer delivers his products. “Preparation for market” clearly has reference to activities which precede “delivery to market.” It is not, however, synonymous with “preparation for sale.” The term must be treated differently with respect to various commodities. It is emphasized that “preparation for market,” like other practices, must be performed “by a farmer or on a farm as an incident to or in conjunction with such farming operations” in order to be within section 3(f).

§ 780.151 Particular operations on commodities.

Subject to the rules heretofore discussed, the following activities are, among others, activities that may be performed in the “preparation for market” of the indicated commodities and may come within section 3(f):

(a) *Grain, seed, and forage crops.* Weighing, binning, stacking, drying, cleaning, grading, shelling, sorting, packing, and storing.

(b) *Fruits and vegetables.* Assembling, ripening, cleaning, grading, sorting, drying, preserving, packing, and storing. (See *In the Matter of J. J. Crosetti*, 29 LRRM 1353, 98 NLRB 268; *In the Matter of Imperial Garden Growers*, 91 NLRB 1034, 26 LRRM 1632; *Lenroot v. Hazelhurst Mercantile Co.*, 59 F. Supp. 595; *North Whittier Heights Citrus Ass’n v. NLRB*, 109 F.2d 76; *Dofflemeyer v. NLRB*, 206 F.2d 813.)

(c) *Peanuts and nuts (pecans, walnuts, etc.).* Grading, cracking, shelling, cleaning, sorting, packing, and storing.

(d) *Eggs.* Handling, cooling, grading, candling, and packing.

(e) *Wool.* Grading and packing.

(f) *Dairy products.* Separating, cooling, packing, and storing.

(g) *Cotton.* Weighing, ginning, and storing cotton; hulling, delinting, cleaning, sacking, and storing cottonseed.

(h) *Nursery stock.* Handling, sorting, grading, trimming, bundling, storing, wrapping, and packing. (See *Jordan v. Stark Brothers Nurseries*, 45 F. Supp. 769;

Wage and Hour Division, Labor

§ 780.155

Mitchell v. Huntsville Nurseries, 267 F.2d 286.)

(i) *Tobacco*. Handling, grading, drying, stripping from stalk, tying, sorting, storing, and loading.

(j) *Livestock*. Handling and loading.

(k) *Poultry*. Culling, grading, cooping, and loading.

(l) *Honey*. Assembling, extracting, heating, ripening, straining, cleaning, grading, weighing, blending, packaging, and storing.

(m) *Fur*. Removing the pelt, scraping, drying, putting on boards, and packing.

SPECIFIED DELIVERY OPERATIONS

§ 780.152 General scope of specified delivery operations.

Employment in “secondary” agriculture, under section 3(f), includes employment in “delivery to storage or to market or to carriers for transportation to market” when performed by a farmer as an incident to or in conjunction with his own farming operations. To the extent that such deliveries may be accomplished without leaving the farm where the commodities delivered are grown, the exemption extends also to employees of someone other than the farmer who raised them if they are performing such deliveries for the farmer. However, normally such deliveries require travel off the farm, and where this is the case, only employees of a farmer engaged in making them can come within section 3(f). Such employees would not be engaged in agriculture in any workweek when they delivered commodities of other farmers, however, because such deliveries would not be performed as an incident to or in conjunction with “such” farming operations, as explained previously. If the “delivery” trip is within section 3(f) the necessary return trip to the farm is also included.

§ 780.153 Delivery “to storage.”

The term “delivery to storage” includes taking agricultural or horticultural commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, or poultry to the places where they are to be stored or held pending preparation for or delivery to market. The fact that the commodities have been subjected

to some other practice “by a farmer or on a farm as an incident to or in conjunction with such farming operations” does not preclude the inclusion of “delivery to storage” within section 3(f). The same is true with respect to “delivery to market” and “delivery to carriers for transportation to market.”

§ 780.154 Delivery “to market.”

The term “delivery * * * to market” includes taking agricultural or horticultural commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, or poultry to market. It ordinarily refers to the initial journey of the farmer’s products from the farm to the market. The market referred to is the farmer’s market which normally means the distributing agency, cooperative marketing agency, wholesaler or processor to which the farmer delivers his products. Delivery to market ends with the delivery of the commodities at the receiving platform of such a farmer’s market (*Mitchell v. Budd*, 350 U.S. 473). When the delivery involves travel off the farm (which would normally be the case) the delivery must be performed by the employees employed by the farmer in order to constitute an agricultural practice. Delivery by an independent contractor for the farmer or a group of farmers or by a “bird-dog” operator who has purchased the commodities on the farm from the farmer is not an agricultural practice (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, in the case of fruits or vegetables, the Act provides a special overtime pay exemption for intrastate transportation of the freshly harvested commodities from the farm to a place of first marketing or first processing, which may apply to employees engaged in such transportation regardless of whether they are employed by the farmer. See subpart J of this part 780, discussing the exemption provided by section 13(b)(16).

§ 780.155 Delivery “to carriers for transportation to market.”

The term “delivery * * * to carriers for transportation to market” includes taking agricultural or horticultural