

## Wage and Hour Division, Labor

## § 780.151

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. Waiialua*, 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

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;