PRACTICES EXEMPT UNDER ''SECONDARY'' MEANING OF AGRICULTURE GENERALLY

§ 780.128 General statement on "secondary" agriculture.

The discussion in §§ 780.106 through 780.127 relates to the direct farming operations which come within the ''primary'' meaning of the definition of ''agriculture.'' As defined in section 3(f) ''agriculture'' includes not only the farming activities described in the ''primary'' meaning but also includes, in its ''secondary'' meaning, ''any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market delivery to storage or to market or to carriers for transportation to market.'' The legislative history makes it plain that this language was particularly included to make certain that independent contractors such as threshers of wheat, who travel around from farm to farm to assist farmers in what is recognized as a purely agricultural task and also to assist a farmer in getting his agricultural goods to market in their raw or natural state, should be included within the definition of agricultural employees (see *Bowie* v. *Gonzalez,* 117 F. 2d 11; 81 Cong. Rec. 7876, 7888).

§ 780.129 Required relationship of practices to farming operations.

To come within this secondary meaning, a practice must be performed either by a farmer or on a farm. It must also be performed either in connection with the farmer's own farming operations or in connection with farming operations conducted on the farm where the practice is performed. In addition, the practice must be performed ''as an incident to or in conjunction with'' the farming operations. No matter how closely related it may be to farming operations, a practice performed neither by a farmer nor on a farm is not within the scope of the ''secondary'' meaning of ''agriculture.'' Thus, employees employed by commission brokers in the typical activities conducted at their establishments, warehouse employees at the typical tobacco warehouses, shop employees of an employer engaged in the business of servicing machinery and equipment for farmers, plant employees of a company dealing in eggs or poultry produced by others, employees of an irrigation company engaged in the general distribution of water to farmers, and other employees similarly situated do not generally come within the secondary meaning of ''agriculture.'' The inclusion of industrial operations is not within the intent of the definition in section 3(f), nor are processes that are more akin to manufacturing than to agriculture (see *Bowie* v. *Gonzales,* 117 F. 2d 11; *Fleming* v. *Hawkeye Pearl Button Co.,* 113 F. 2d 52; *Holtville Alfalfa Mills* v. *Wyatt,* 230 F. 2d 398; *Maneja* v. *Waialua,* 349 U.S. 254; *Mitchell* v. *Budd,* 350 U.S. 473).

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 nonfarming 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