

## FLSA-1074

August 24, 1979

This is in reply to your letters of June 18, and August 10, 1979, asking on behalf of your client, if work performed by farm employees in a hog processing facility owned and operated by a farmer on the farmer's farm constitutes an agricultural activity within the meaning of section 3(f) of the Fair Labor Standards Act.

Section 3(f) of the Act contains a very comprehensive definition of the term "agriculture". It is important to note that section 3(f) contains two types of agricultural activities which are considered agriculture. Primary agriculture, which includes tilling, cultivating, planting, feeding, raising, caring for the crops, livestock, bees and poultry. And secondary agriculture, which includes all work performed by a farmer on the farm or for a farmer that is related to the farming operation. Since the processing of hog remains is not includable in primary agriculture, the question is whether it is secondary agriculture.

The Supreme Court in Maneja v. Waialua Agricultural Co. 12 WH 502, 349 U.S. 254, reiterated seven factors which the Administrator has considered as relevant factors, to assist in the making of a determination of whether an operation performed by a farmer on a farm is an incident to or in conjunction with farming:

- (a) The size of the ordinary farming operations.
- (b) The type of product resulting from the operation in question.
- (c) The investment in the processing operation as opposed to the ordinary farming activities.
- (d) The time spent in processing and in ordinary farming.
- (e) The extent to which ordinary farmworkers do the processing.
- (f) The degree of separation between the various operations.
- (g) The degree of industrialization.

You state the farmer employs 30 full-time employees to raise corn, wheat and soybeans, to raise and breed cattle and hogs; and to perform their agricultural activities on 5,000 acres of farm land. In 1977, \$1,158,000 was earned from the farming operations. The farm is in two tracts, each acre is valued at \$250 for tax purposes (\$1,250.00), but is farmed as one operation. Hogs bred and raised on the farm, and to which the farmer retains title, are slaughtered off the farm and returned to a processing facility located on the farm. The investment in the processing facility is approximately \$75,000. Several farm employees unload the hog remains from the truck, wash and clean the hog remains, and apply your client's special curing mixture, for several hours every few weeks. The complete curative process takes about 9 months, during which the hog remains are moved from one area of the processing facility to another by the employees, as part of the curing process. At the end of the 9 months the processed products are sold through an outlet on the farm or shipped to customers. In 1977, less than \$200,000 was generated from such sales. You believe the several hours every few weeks the farm employees spend at the

processing facility doing the work described above, is agricultural work within the meaning of section 3(f) of the Act.

Generally, a practice performed in connection with farming operations is within the statutory language only if it constitutes an established part of agriculture, is subordinate to the farming operations involved, and does not amount to an independent business. No practice performed with respect to farm commodities is within the language under discussion by reason of its performance on a farm unless all of such commodities are the products of that farm. Thus based on the information in your letters, it is our opinion that the time spent by the farm employees processing hog remains as described above, is within the meaning of section 3(f) of the Act.

Sincerely,

C. Lamar Johnson  
Deputy Administrator