

FLSA-1066

September 29, 1980

Thank you for your correspondence of August 6, 1980, with which you enclosed a copy of a letter from Mr.*** concerning the application of the Fair Labor Standards Act to employees of a farmer who does some custom harvesting and cleaning of blueberries for smaller farmers.

We understand from information presented in Mr.*** letter and in a telephone conversation on September 5, 1980, between your constituent and Mr. *** of my staff that the blueberries must be cleaned by the farmers before the *** Blueberry Growers Association will accept them for distribution. In the cleaning process, the blueberries are carried on a dry belt or in water to a blower which removes sticks, unripe blueberries and other extraneous material. Next, the blueberries pass through an inspection line for the final removal of unripe blueberries, sticks, etc., and are placed in crates. From this point the blueberries are transported to the Association for distribution. In the cleaning process, some of the larger farmers clean the blueberries grown by smaller farmers.

The Fair Labor Standards Act is the Federal law of most general application concerning wages and hours of work. The major highlights of this law regarding agricultural employment are contained in the enclosed copy of 29 CFR Part 780 which you may wish to send to Mr. ***.

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 crops, livestock, bees and poultry. And secondary agriculture, which includes all work performed by a farmer on a farm or for a farmer that is related to such farming operations.

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. As stated in section 780.141 of the enclosed bulletin, no practice performed with respect to farm commodities is within the language of this section 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 Mr. *** letter and that obtained by telephone conversation, it is our opinion that the time spent by the farm employees working on blueberries grown by other farmers, is not within the meaning of section 3(f) of the Act.

Sincerely,

Henry T. White, Jr.
Deputy Administrator

Enclosure