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Elmer F. Andrews, Administrator, Wage and Hour Division, U. S.  
Department of Labor, today released the following interpretative bulletin  
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WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR  
OFFICE OF THE GENERAL COUNSEL

INTERPRETATIVE BULLETIN No. 14

INTERPRETATIVE BULLETIN ON THE EXEMPTION  
OF AGRICULTURE; AND ON THE EXEMPTIONS  
FOR PROCESSING AGRICULTURAL COMMODITIES

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## "Introduction"

1. Section 13(a)(6) renders the wage and hour provisions of the Act inapplicable to employees employed in "agriculture," as that term is defined in Section 3(f); section 7(c) renders the hour provisions of the Act totally or partially inapplicable to employees of employers engaged in certain types of operations upon agricultural or horticultural commodities, dairy products, poultry or livestock; and section 13(a)(10) renders the wage and hour provisions of the Act inapplicable to persons employed in certain types of activities with respect to agricultural or horticultural commodities or employed in making dairy products. This Bulletin will set forth the construction of these sections which will guide the Administrator in the performance of his administrative duties unless he is directed otherwise by authoritative rulings of the courts or unless he shall subsequently decide that his prior interpretation is incorrect.

The bulletin will not deal with the question of what employees engaged in agriculture or in the processing of agricultural products are engaged "in (interstate) commerce or in the production of goods for (interstate) commerce" so as to entitle them to the benefits of the Act. For statements as to the coverage of the Act, see Interpretative Bulletins Nos. 1 and 5. These and other interpretative materials and regulations can be obtained on request from the Wage and Hour Division.

## "Agriculture"

2. Section 13(a)(6) of the Fair Labor Standards Act exempts from both the wage and hour provisions "any employee employed in agriculture."

"Agriculture" is defined in Section 3(f) as follows:

"Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the pro-

duction, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and 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."

An employee is exempt by virtue of Section 13(a)(6) if, but only if, his work falls within the specific language of Section 3(f). If during any workweek an employee performs work some of which is exempt under Section 3(f) and some of which is not exempt, the exemption does not apply to him during that workweek. It is our opinion, in other words, that there can be no segregation within a workweek between exempt and nonexempt operations.

Paragraphs 3 to 13 of this bulletin, which follow, will discuss the operations described in Section 3(f). Employees engaged in the described operations are not subject to the wage and hour provisions of the Act.

"Cultivation and tillage of the soil"

3. The term "cultivation and tillage of the soil" includes all the operations necessary to prepare a suitable seedbed, eliminate competing weed growth and improve the physical condition of the soil.

"Dairying"

4. The term "dairying," includes the work of milking cows or goats, putting the milk into containers, cooling it, and storing it on the farm. Furthermore, the legislative history of the Act indicates that if

the farmer and his employees engage in such operations as separating the cream from milk obtained from the farmer's cows or goats, bottling such milk and cream, or making butter and cheese out of such milk and cream, those operations also fall within the exemption."

"Production, cultivation, growing, and harvesting of any agricultural or horticultural commodities"

5. (a) The term "production, cultivation, growing . . . of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended)" includes all customary operations in connection with raising any "agricultural or horticultural commodities." The term "harvesting of any agricultural or horticultural commodities" includes all operations customarily performed in connection with the removal of the crops by the farmer from their growing position in the field, greenhouse, etc. The Act, it should be noted, makes no distinction between employees on the basis of the purpose of their employers in producing, cultivating, growing, and harvesting agricultural or horticultural commodities. Hence, if the employer owns a factory and a farm and operates the farm only for experimental purposes in connection with the factory, those of his employees, who devote all their time during particular workweeks to the production, cultivation, growing, and harvesting of agricultural or horticultural commodities, are nevertheless exempt from the Act during such workweeks.

(b) The term "agricultural or horticultural commodities" includes the following: grains, forage crops, fruits, vegetables, nuts, sugar crops, fibre crops, tobacco, nursery products, and eggs. Thus, employees engaged in

raising wheat, corn, hay, onions, carrots, sugar cane, or seed, or any other agricultural or horticultural commodity, are engaged in "agriculture" and are exempt from the wage and hour provisions of the Act. This is true, even if the employer has other employees engaged in other operations which are not within the definition of "agriculture." For example, if an employer has a factory and farm located on the same land, the employees working exclusively on the farm, who produce, cultivate, grow, and harvest agricultural or horticultural commodities, are not subject to the wage and hour provisions of the Act, while those employed at the factory may be subject to the Act.

(c) Section 3(f) defines "agriculture" to include the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including those defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended. Since the Agricultural Marketing Act includes oleoresin from a living tree within the definition of "agricultural commodity," the production, etc., of such oleoresin is within the exemption provided in Sections 13(a)(6) and 3(f). Similarly, under the Agricultural Marketing Act, if the employer who produces the oleoresin puts such oleoresin through a process of distillation and derives gum spirits of turpentine and gum rosin therefrom, such turpentine and rosin also come under that Act's definition of "agricultural commodity." These activities are, therefore, also within the definition of "agriculture" contained in section 3(f). If turpentine and rosin are derived in any other manner, however, as by digging up pine stumps and grinding them or by distilling the turpentine with steam from the oleoresin within or extracted from wood, as distinguished from the living tree, or if



the person, who produces the spirits of turpentine or resin from oleoresin from a living tree, does so not only from oleoresin produced by him but also from oleoresin delivered to him by others, the exemption is inapplicable to the employees engaged in such operations. Under those circumstances the turpentine and resin are not agricultural commodities within the meaning of the aforesaid section 15(g) of the Agricultural Marketing Act, as amended, and their production is therefore not within the definition of "agriculture" contained in section 3(f).

(d) Some commodities such as mushrooms, flowers, and seeds, instead of being grown in open fields, are frequently grown in enclosed houses, greenhouses or hotbeds. As long as the commodities are agricultural or horticultural, their production, cultivation, growing, and harvesting fall within the exemption, whether they are grown in enclosed houses or in the open field.

(e) The employees of a nursery who are engaged in the following activities are employed in "agriculture":

1. Sowing seeds and otherwise propagating fruit, nut, vegetable and ornamental plants or trees, and shrubs, vines and flowers;
2. Handling such plants, etc. from propagating frames to the field;
3. Planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

The term "agriculture," as used in the Act, does not include the science and art of cultivating forests. Consequently, one who is engaged in planting seedlings is not exempt unless the seedling is a nursery product or unless the operation is performed as an incident to or in conjunction with

farming operations. On the latter point reference is made to Interpretative Bulletin No. 7, which discusses the question when forestry or lumbering operations are incident to or in conjunction with farming operations so as to constitute "agriculture."

"Raising of livestock"

6. The term "raising of livestock" includes the breeding, fattening, feeding, and general care of the following animals, among others; cattle, sheep, swine, horses, mules, jackasses or goats. It does not include such operations as feeding the livestock at the stockyards.

Since the Act makes no distinction with respect to employees on the basis of the purpose for which the livestock is raised, employees engaged in such raising would be exempt from the wage and hour provisions of the Act, even if the livestock was raised to obtain serum or virus or was raised under contract for others.

"Raising of bees"

7. The term "raising of bees" refers to all of those activities customarily performed in connection with the handling and keeping of bees, including the treatment of disease and the raising of queens.

"Raising of fur-bearing animals"

8. The term "raising of fur-bearing animals" includes all of those activities customarily performed in connection with the breeding, feeding, and caring for animals which bear fur of marketable value, including the treatment of disease. The fur-bearing animals included, among others, are rabbits, silver foxes, minks, squirrels, and muskrats.

"Raising of poultry"

9. The term "raising of poultry" includes the breeding, feeding and general care of poultry. The word "poultry" includes domesticated fowl and game birds.

"Practices . . . performed by a farmer"

10. The term "practices (including any forestry or lumbering operations) performed by a farmer . . . 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" involves many diverse matters. As to a discussion of when forestry or lumbering operations are incident to or in conjunction with farming operations, reference is again made to Interpretative Bulletin No. 7.

It should be noted with respect to all of these practices that they must be performed by the farmer and his employees and that such practices must be incident to or in conjunction with the farming operations of the farmer. It makes no difference whether they are performed on or off the farm if performed by a farmer. The line between practices which are incident to or in conjunction with farming operations, and those which are not, is not susceptible of precise definition. The agricultural exemption, however, would seem to include only practices which constitute a subordinate and established part of the farming operations. Factors that would indicate that the practices performed by a farmer are thus subordinate would be, among other things, that most of the employees engaged in such practices are normally employed also in farming operations upon the farm, and that these practices occupy only a minor portion of the time of the farmer and such employees and do not constitute the farmer's principal business.

When a farmer is engaged in these practices on agricultural or horticultural commodities grown on other farms as well as his own, as for example, when he cans tomatoes which come both from his farm and from the farms of others, such operations do not seem to be incident to or in conjunction with his farming operations. In our opinion such operations assume the

aspect of an independent business and do not fall within this exemption.

"(Forestry or lumbering operations) performed by a farmer"

(a) The term "forestry or lumbering operations" refers to the cultivation and management of forests, the felling and removal of timber, and the conversion of logs and timber into rough lumber and similar products. It also includes the piling, stacking and storing of all such products. "Wood working" as such is not included.

"Preparation for market" (performed by a farmer)

(b) The term "Preparation for market" must be treated differently with respect to various commodities. The following activities, among others, when performed by a farmer, seem to be included within the term:

1. Grain, seed and forage crops - Weighing, binning, stacking, cleaning, grading, shelling, sorting, packing, and storing.
2. Fruits and vegetables - Assembling, binning, ripening, cleaning, grading, sorting, drying, preserving, packing, storing, and canning.
3. Nuts (pecans, walnuts, peanuts, etc.) - Grading, cracking, shelling, cleaning, sorting, packing, and storing, unshelled nuts; and performing the same operations except cracking and shelling, upon the nut meats.
4. Sugar - Manufacturing raw sugar, cane or maple syrup and molasses.
5. Eggs - Handling, cooling, grading and packing.
6. Wool - Grading and packing.
7. Dairy products - Salting, printing, wrapping, packing and storing butter; ripening, molding, wrapping, packing and storing cheese; and canning or packing any other dairy product.

8. Cotton - Weighing, ginning, and storing cotton; hulling, de-linting, cleaning, sacking, and storing cottonseed.
9. Nursery stock - Handling, wrapping, packaging, and grading.
10. Tobacco - Handling, drying, bulking, stripping, tying, sorting, stemming, packing and storing.
11. Livestock - Handling and loading.
12. Poultry - Culling, grading, cooping, and loading.
13. Honey - Assembling, extracting, heating, ripening, removing comb, straining, cleaning, grading, weighing, blending, packing, and storing.
14. Fur - Removing the pelt, scraping, drying, putting on boards, and packing.

"Delivery to storage" (performed by a farmer)

(c) The term "delivery to storage" includes taking the 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.

"Delivery ... to market" (performed by a farmer)

(d) The term "delivery ... to market" includes taking the commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, or poultry to market.

"Delivery ... to carriers for transportation to market"  
(performed by a farmer)

(e) The term "delivery ... to carriers for transportation to market" includes taking the commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, and poultry to a carrier - truck, railroad, ship, etc. - for transportation by such carrier to market.

Other Practices (performed by a farmer)

(f) Besides the practices listed in the statute as being incident to or in conjunction with farming operations, there are other practices included within the exemption.

The actual selling of the agricultural or horticultural commodities, etc. is such a practice. The truck drivers working for a farmer, who haul garbage and feed to the farm for feeding pigs, also perform practices that are exempt. If a company has sugar cane fields and also a mill, the transportation of its own sugar cane to the mill seems an incidental practice which is included in this term.

It must be emphasized with respect to all practices performed by a farmer, for which a claim is made that they are incident to or in conjunction with his farming operations, that they must be performed only on the agricultural or horticultural commodities, dairy products, livestock, bees, fur-bearing animals, or poultry produced or raised by him. The same limitation applies with respect to the practices discussed in paragraph 11, below.

"Practices ... performed ... on a farm"

11. The term "practices (including any forestry or lumbering operations) performed . . . on a farm as an incident to or in conjunction with" farming operations, involves substantially the same inquiries as those discussed in paragraph 10.

It should be observed, however, that since these practices must be performed on a farm, one of the activities listed in the statute, namely, delivery to market, cannot normally be one of the included practices, for that involves working off the farm. Hence, employees of independent contractors engaged in transporting to market agricultural or horticultural commodities, dairy products, poultry, livestock, bees or their honey, and fur-bearing

animals or their pelts, would not be exempt. With that exception, practices described in paragraph 10, even if performed by employees of someone other than the farmer, are excluded from the wage and hour coverage of the Act, so long as they are performed on the farm and "as an incident to or in conjunction with such farming operations."

Thus, if an independent contractor threshes wheat on a farm, his employees are not subject to the wage and hour provisions of the Act while they are so engaged on the farm where the wheat is grown. So, too, employees of an independent contractor who inspect and cull flocks of poultry on a farm are exempt while they are working on the farm where such poultry is raised. Similarly, employees erecting a silo on a farm are exempt while they are working on such farm.

Office workers, etc.

12. We have received inquiries concerning office help -- secretaries, clerks, bookkeepers, etc. -- night watchmen, maintenance workers, engineers, etc., who are employed by a farmer or on a farm in connection with the activities described in the definition of "agriculture" contained in Section 3(f). In our opinion such employees are exempt.

Commission brokers

13. Employees of commission brokers do not fall within the exemption for the reason that the practices performed by them do not constitute practices performed by a farmer nor do they take place on a farm.

Complete and partial exemptions under Section 7(c)  
from the hour provisions for employees of employers  
engaged in certain operations on agricultural or  
horticultural commodities and poultry or livestock

14. Section 7(c) of the Act provides:

"In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cotton seed, or in the processing of sugar beets, sugar beet molasses, sugar cane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged."

Thus, it will be observed that this Section grants the following exemptions:

1. A complete exemption from the hour provisions to employees "in any place of employment" where their employer is engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products.
2. The same complete exemption where the employer is engaged in the ginning and compressing of cotton, or in the processing of cotton seed.
3. The same complete exemption where the employer is engaged in the processing of sugar beets, sugar beet molasses, sugar cane, or maple sap into sugar (but not refined sugar) or into syrup.
4. An exemption, for a period aggregating not more than 14 workweeks in any calendar year, from the hour provisions to employees "in any place of employment" where their employer is engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables.



5. The same partial exemption from the hour provisions where the employer is engaged in the first processing, within the area of production (as defined by the Administrator) of any agricultural or horticultural commodity during seasonal operations.

6. The same partial exemption from the hour provisions where the employer is engaged in handling, slaughtering, or dressing poultry or livestock.

Where any exemption provided by Section 7(c) is applicable, there is no limit to the hours which the employees may work during the exempt period without being entitled to any overtime compensation under the Act.

"First processing of milk, whey, skimmed milk, or cream into dairy products"

15. In considering what activities fall within this term it seems essential to determine the significance of the word "processing". In our opinion "processing" connotes a change in the form of the raw materials. It follows that "first processing" means the first such change in the form of the raw materials. It should be noted that with respect to the exemption now under discussion the raw materials may be either milk, whey, skimmed milk or cream.

The "first processing of milk" includes the making of cooled and pasteurized milk, skimmed milk, cream, whey, curd, dried milk, condensed milk, evaporated milk, and clabber. It is also clear from the Congressional debates that the making of non-process cheese is included within the "first processing of milk". However, the further processing of non-process cheese into process cheese is not included.

The "first processing of . . . whey" includes the making of dried whey, whey cream and milk sugar. The further processing of whey cream into whey butter is not included.

The "first processing . . . skimmed milk" includes the making of whey, wet casein, dried skimmed milk, condensed skimmed milk, and evaporated skimmed milk. The further processing of wet casein into dried casein and the further processing of the dried casein are not included.

The "first processing of . . . cream" includes the making of butter, buttermilk, dried cream, and sour cream. The further processing of butter into process butter is not included.

As for the making of malted milk, ice cream mix, ice cream, and ice cream novelties, since their manufacture involves the use of ingredients other than milk, whey, skimmed milk, or cream to a substantial extent, and since their manufacture does not, in our opinion, constitute the first change in the form of the raw materials, such manufacture is not included within this exemption.

"Ginning and compressing of cotton"

16. This term includes the operations of separating the cotton lint from the seed, pressing and wrapping such lint into bales, and then compressing such bales. The receiving and weighing of the lint, both before and after compressing, would also seem to be part of the compressing operation. Such operations, therefore, are included within the exemption.

The storing of cotton, either before or after compressing, is not, in our opinion, included in the term "ginning and compressing of cotton." Support for this position is found in the fact that the word "storing" was in the bill at one time in connection with an exemption from the hour provisions and was subsequently deleted. (See also paragraph 23).

"Processing of cotton seed"

17. This term includes cleaning and removing hulls and linters from

the cotton seed, extracting oil therefrom and making cottonseed cake or meal. These operations may be performed simultaneously or consecutively, and one employer may perform all of them or only some of them. In any event, such operations are outside the purview of the overtime provisions. The refining of cotton seed oil, however, is not included in this exemption.

"Processing of sugar beets, sugar beet molasses, sugar cane, or maple sap, into sugar (but not refined sugar) or into Syrup"

18. The term "refined sugar" is commonly understood to refer to the product of the refinement of "raw sugar." The term "raw sugar" describes the product of the first processing of sugar cane, which product normally is thereafter refined before it is consumed. The processing of sugar cane into raw sugar is within the exemption; the processing of raw sugar into refined sugar is not within the exemption. Likewise the processing of cane molasses and syrup into refined sugar is not exempt.

Sugar obtained from sugar beets or sugar beet molasses, by processes now in common use, is ready for direct consumption without further refining. Beet sugar thus produced is within the exemption. To hold otherwise would, in our opinion, render meaningless the words "processing of sugar beets, sugar beet molasses."

The following are also within the exemption: (1) The manufacture of maple sugar from maple sap and (2) the manufacture of syrup from sugar cane and maple sap.

Operations performed on bagasse, such as removing same from the sugar mill, baling and compressing, are not included in the exemption, since such operations do not constitute the "processing of . . . sugar cane", and further such operations do not result in sugar or syrup. The exemption, it should be noted, is limited to the processing of sugar cane "into sugar . . . or into syrup."

"First processing of, or. . . canning or packing,  
perishable or seasonal fresh fruits or vegetables".

19. With respect to the operations included in this fourteen work-weeks exemption from the hour provisions of the Act, it must first be pointed out that the exemption is applicable only if the operations are performed on perishable or seasonal fresh fruits or vegetables.

Fresh fruits and vegetables are the fruits and vegetables in their raw and natural state as distinguished from them after they are "processed," canned or dried. Although nuts may be fruits, they are not fresh fruits even when newly picked. Similarly, dried fruits and dry edible beans cannot be considered fresh fruits or vegetables.

If the fruits or vegetables in question are perishable or seasonal fresh fruits or vegetables as explained above, the following operations with respect to them fall within the exemption: drying, freezing, preserving (for example, cucumbers or cherries in brine), packing, or canning. (for an explanation of what constitutes "canning," reference is made to paragraph 34). The stemming of strawberries also seems to fall within the exemption.

The following operations are not exempt for they are not performed on fresh fruits or vegetables; making and canning of vinegar, canning of baked beans, chili and tamales, crystalizing of citrus peel, making and canning of marmalade, repacking or recanning fruits and vegetables, producing wine from grape juice, and drying of citrus waste for conversion into cattle food.

The storing of fruits and vegetables in a storage house does not seem to be a "first processing" operation and, hence, is not exempt.

"First processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations."

20. No attempt will be made here to discuss the expression "area of production", which limits this fourteen workweeks exemption. For the Administrator's definition, reference is made to Regulations, Part 536, as amended, and to press release R-334 explaining the definition.

The term "any agricultural or horticultural commodity" seems designed to cover any such commodity not otherwise mentioned in the subsection. Consequently, it does not include milk, whey, skimmed milk, cream, cotton, cottonseed, sugar beets, sugar beet molasses, sugar cane, maple sap, perishable or seasonal fresh fruits or vegetables, poultry, or livestock. Further, the term "agricultural or horticultural commodity" connotes the commodity as it comes from the farm and before any change is effected in its natural state. Thus, since nut meats, for example, are not agricultural commodities, the roasting thereof is not included in the exemption provided by this section. Similarly, since commercial fertilizer is composed of various substances, at least some of which are not agricultural commodities, it cannot be said that its manufacture is the processing of an agricultural commodity.

As set forth above, "first processing" connotes the first change in the form of the raw materials. Congress apparently did not mean to include in the exemption such operations as the manufacture of leather, the baking of bread, the manufacture of rope from hemp, the manufacture of cigars, etc., the spinning of thread, the manufacture of tallow, etc., although these operations may be the processing of materials originally produced from agricultural commodities.

Among operations included in the exemption are the following:

1. Grains -- Hulling, shelling, cracking, or grinding of whole grains, including the milling of flour. The further processing of corn into cornflakes, rice into puffed rice, and the making of malt or alcoholic beverages are not included.
2. Forage crops -- Grinding.
3. Seeds, beans and peas -- Hulling; extracting oil from flaxseed or linseed.
4. Nuts -- Roasting and extracting oil from unshelled nuts, shelling and picking. The further processing of shelled nuts is not included.
5. Fibre crops -- Decorticating.
6. Tobacco -- Stemming, Redrying and fermenting.
7. Eggs -- Breaking and separating. Grading, candling, refrigerating, buying, and selling eggs are not included.  
(See also Paragraph 33, Subsection 1)
8. Fur -- Scraping and drying.
9. Honey -- Heating, scraping and straining.

"Handling, slaughtering, or dressing poultry or livestock"

21. The following activities are covered by the exemption:  
Livestock -- transporting to the slaughterhouse, stockyards, or other place where the livestock is to be sold; receiving same, weighing, or otherwise determining the basis for payment to producers; grading; and selling; slaughtering; and dressing, i.e., bleeding, removing head, hide, hair,

entrails, and dirt. Poultry-- buying and transporting live poultry to the place where it is to be slaughtered; receiving same; weighing, or otherwise determining the basis on which the producer is to be paid; grading; cooping; and selling the live poultry; slaughtering; and all operations generally performed in connection with the dressing of poultry. The exemption also applies to the employees of brokers or commission houses if and to the extent that they are engaged in physically "handling" poultry or livestock.

The exemption applies only to the handling of poultry and livestock and not poultry and livestock products or byproducts. Thus, the manufacturing, curing, smoking, grading, refrigerating, and packing of meat products and byproducts, such as beef, veal, casing, pork cuts, pigs feet, sausages, fertilizer, tallow, grease, hides, offal, beef extracts, oleo products, sheep skins, and shortening, the processing of livestock and poultry meat for packing and canning purposes, and the packing and canning of such meat are not included.

A renderer, who disposes of the bodies of dead animals, and who makes and sells hides, grease, tallow and tankage, does not perform operations which are included within the exemption.

"Exemption inapplicable to employees outside place of employment"

22. With respect to both the complete and partial exemption from the hours provisions of the Act under Section 7(c), the exemption is applicable only to the employees of an employer "in any place of employment where he is so engaged"(In the described operation). This raises the question of how the exemption operates where an employer has several establishments. It is our opinion that in such a case, each establishment, i.e., the plant together with the surrounding premises, constitutes a "place of employment"

and the exemption applies separately to each establishment. It should be noted, however, that a "place of employment," although constituting only one establishment, may contain several buildings in which the exempt operations are performed. In that case, of course, there is only one exemption for the whole "place of employment."

Since Section 7(c) renders the hours provisions of the Act inapplicable only to employees employed "in(the) place of employment" where their employer is engaged in performing the exempt operations, the employee must work in the establishment. Thus, employees who distribute advertising circulars do not seem to be within the exemption, for they are not employed at the "place of employment" where the employer is engaged in the exempt operations. However, truck drivers who carry raw materials to the establishment or who transport goods upon which the exempt operation has been performed may be considered as working in the "place of employment," for they make regularly recurring trips to and from the establishment and may be deemed attached thereto. Further, some of their work, such as loading and unloading, takes place in the establishment.

If a dairy concern has one establishment at which it makes butter and another at which it prints and wraps the butter, the exemption is inapplicable to the employees at the latter establishment, for they are not employed at the "place of employment" where their employer is engaged in the "first processing of milk," etc., into dairy products. So, too, if milk is condensed at one establishment and moved to another establishment where it is subjected to further processes, the employees working at the latter establishment are not exempt although those at the former establishment are exempt.

Which Employees are Exempt

23. (a) The determination as to whether all employees of the employer



who are working in the establishment are included in the exemption or whether the exemption applies to only such employees as perform the operations described in the section must be made in the light of the legislative history of Section 7(c). The Congressional debates show that the purpose of this Section was to relieve processors of seasonal agricultural commodities from the hour provisions of the Act so as to enable them more easily to conduct their operations during peak seasons. It is our opinion, therefore, that only the employees who perform the operations described in Section 7(c) or who perform operations that are so closely associated thereto that they cannot be segregated for practical purposes, and whose work is also controlled by the irregular movement of commodities into the establishment, are covered by the exemption. For example, in the ordinary case, none of the employees in a department separate from the department in which the exempt operations are performed will be exempt. Thus, employees working in the meat-curing or sausage-making departments of a meat packing house will not be within the exemption.

(b) There is also the following related problem. Some canners of fruits and vegetables can both fresh and dried vegetables within the same workweek and in the same establishment and use the same employees for canning both types of commodities. The question then arises as to whether the employees are within the exemption. Since the purpose of the exemption is to facilitate the handling of seasonal or perishable fresh fruits and vegetables during peak seasons, that purpose would not be served by extending the exemption to the handling of nonseasonal and nonperishable fruits and vegetables. In our opinion, therefore, the exemption does not apply to employees so engaged. Of course, if the operations are segregated, the employees who perform the operations described in the section are exempt. Further, all employees are exempt during any workweek in which their employer is engaged in

canning only seasonal or perishable fresh fruits and vegetables.

Fourteen Workweeks Exemption Period

24. If an employer is entitled to a partial exemption under Section 7(c), he may select any fourteen workweeks in the calendar year. They need not be consecutive. The workweeks he selects, however, must be workweeks in which he is engaged in the exempt operation. A workweek with respect to any employer means seven consecutive days provided that the workweek is not changed for the purpose of evasion of provisions of the Act or any regulations prescribed pursuant thereto. If an employer elects to pay overtime compensation in a particular workweek, or if no overtime is worked during such workweek, that workweek is not included in the fourteen exempt workweeks. Where the employees work overtime for more than fourteen workweeks, the first fourteen workweeks in which overtime is worked and for which they do not receive overtime compensation at the regular pay periods will be deemed to have been claimed by the employer under the exemption.

The employer, who is entitled to a partial exemption, cannot take that exemption for one set of employees and then take the same exemption for another set in the same establishment. The statute states that the exemption shall be applicable for fourteen workweeks "to his employees" "in any place of employment" and that seems to mean all of his employees (subject to the limitations expressed in paragraph 23).

In other words, the Act does not provide consecutive exemptions for different sets of employees in the same establishment, but provides only one exemption. However, if an employer has several places of employment, as explained in paragraph 22, and conducts exempt operations in all of them, the exemption applies separately to each place of employment and the employer

may take a different fourteen workweeks exemption for each.

Total Exemption under Section 13(a)(10) from the Wage and Hour Provisions for Employees Engaged within the "Area of Production" in Certain Types of Operations upon Agricultural or Horticultural Commodities, Including Dairy Products.

25. Section 13(a)(10) provides that neither the wage and hour provisions of the Act shall apply with respect to:

"any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products."

The expression "area of production", which limits this entire exemption, will not be discussed in this bulletin. For the Administrator's definitions of that term, see Regulations, Part 536, as amended, and Release No. 334 explaining the definitions.

Before discussing the meaning of the various processes described in this section, certain preliminary observations seem appropriate.

First, the exemption provided in this section is from both the wage and hour provisions of the Act and not only from the hour provisions.

Second, the exemption provided in this section depends upon the type of activity engaged in by the particular employee. That is, if the employee is engaged in one of the activities described in this section, he is exempt regardless of whether his fellow employees are similarly exempt.

Third, the words "for market," which are found in this section, limit all of the participles which precede it. In other words, the mere "handling" of an agricultural commodity by an employee does not render him exempt. He must be handling it "for market." Thus, an employee engaged in canning commodities for later re-canning by his employer would not be engaged in canning for market and hence would not be exempt.

Fourth, the legislative history of this section indicates that the term "agricultural or horticultural commodities," as used in the section, means those commodities as they come from the farm and before any change has been effected in their natural form. Thus, although flour and raw sugar, for example, may be defined as agricultural commodities in special statutes, they are not agricultural commodities within the meaning of this section. Consequently, the following do not appear to be exempt operations, for all of them are performed on commodities that are not agricultural or horticultural within the meaning of the section: handling of grease, tallow and tankage, storing and packing of shelled pecans and other nut meats, the storing and packing of flour, spaghetti and cereals, the storing and packing of manufactured feed, the packing of corn meal, the packing and storing of alfalfa meal, the packing of milled rice, the conversion of citrus waste into cattle food, the storing and packing of dried fruits, the packing of pickled vegetables, the canning of marmalade, the storing and packing of sugar, molasses or syrup which have been extracted from sugar cane, sugar beets or maple sap, any operations performed upon bagasse and beet pulp, the storing and packing of fermented or steamed tobacco, the handling, packing and bottling of wine, vinegar

and pickles, and the packing of extracts and spices,

"Handling"

26. The operations included in this term appear to be those physical operations customarily performed in obtaining agricultural or horticultural commodities from producers' farms, transporting them to and receiving them at the establishment, weighing them or otherwise determining on what basis the producer is to be paid, placing them in the establishment where further operations are to be performed, and delivering the commodities to warehouses. Specifically, these operations include loading the commodities on trucks, wagons, etc., in producers' fields or at concentration points, transporting them to the establishment, receiving and unloading them at the establishment, counting or weighing the commodities, assembling, binning, piling, or stacking them in the establishment, moving them from one place to another in the establishment, moving the bags, boxes, cases, barrels, bales, coops, and other loaded containers to wagons, trucks, railroad cars or other conveyances, and transporting the commodities away from the establishment. Since it makes no difference that the employer does not own the goods being handled, the employees of brokers or commission houses who physically handle the goods may be within the exemption.

"Packing"

27. Included in this term are those operations involved in placing agricultural or horticultural commodities in containers, and also the operations necessary to close or fasten such containers.

Examples of specific activities, which are included in this term, are the sacking or bagging of unshelled pecans or other unshelled nuts, the sacking of grain, and the placing of fresh fruits and vegetables in crates.

In our opinion the term "packing" does not include operations carried on in meat-packing houses. Support for this proposition is found in the fact that where Congress intended to grant an exemption to the livestock industry, it did so in specific language. For example, in Section 7(c), a partial hours exemption is granted to employees engaged in "handling, slaughtering, or dressing poultry or livestock." (See paragraph 21 of this bulletin for a discussion of the interpretations of that language.) Still further, for the reasons discussed in paragraph 25, meats, livestock products, etc., are not agricultural commodities within the meaning of Section 13(a)(10) and, therefore, the packing of them is not an exempt operation.

"Storing"

23. Operations which appear to be included in this term are those involved in (1) placing agricultural or horticultural commodities in storage rooms or other places where the commodities are to be held prior to further preparation, sale or shipment; (2) taking care of the commodities while they are being so held; and (3) removing them from the storage rooms and transferring them to wagons, trucks, railroad cars, or other conveyances. Since the placing of cherries or cucumbers in brine is a preserving operation, which effects a change in the natural form of the commodities, it is not "storing" within the meaning of this section.

"Ginning"

29. This term is normally applied only to the operation of processing seed cotton and the legislative history indicates that it was this operation which Congress had in mind. "Ginning" involves the operation of removing the seed from the lint and then pressing and wrapping the bale of lint. It does not include other operations which may be performed on the cottonseed or the cotton lint, even though such operations are performed in the same establishment where the ginning is done. For example, it does not include the processing of cottonseed.

"Compressing"

30. This term is generally applied to the cotton industry only and the legislative history indicates that it was so intended by Congress. It includes the operations of receiving and weighing the bales cotton lint at the compressing establishment, placing the baled cotton lint in the presses, operating the presses, tying steel bands around the bales, and removing the bales from the presses. It is our opinion that the term does not apply to the pressing of a commodity in order to extract an oil, juice, or syrup therefrom. Hence, the extraction of oil, juice, or syrup from cottonseed, flaxseed, tung nuts, peanuts,, soybeans, fruits or vegetables, sugar cane, sugar beets, rice, etc., does not fall within the exemption.

"Pasteurizing"

31. This term usually refers to an operation performed upon milk or cream. It consists of heating the fluid milk or cream, holding it at a high temperature, and then cooling it. The placing of the milk or cream into bottles would also seem to be included in the term.

"Drying"

32. The operations included in this term appear to be those performed on agricultural or horticultural commodities in order to remove or lower their moisture content. Such operations may be performed by natural methods or by exposure to heat from ovens, furnaces, etc. Typically, these operations are performed on fruits, vegetables, hay, and tobacco. The term does not include drying operations which takes place on commodities that have ceased to be agricultural commodities within the meaning of Section 13(a)(10) because their natural form has previously been changed. Thus, the drying of eggs that have been broken and separated and the drying of tobacco that has been stemmed are not included within the exemption.

"Preparing in their raw or natural state"

33. The operations included in this term may be any of a large number that are performed in connection with many different kinds of agricultural or horticultural commodities. They do not include operations which change the form of the commodity or which are performed after the commodity leaves it raw or natural state.

The following examples will prove helpful in determining whether particular operations are included in the term:

1. Eggs -- Candling, sizing, grading, and cooling are included. Breaking, separating, mixing and freezing are not included.

2. Fruits and vegetables -- Cleaning, washing, polishing, grading, sizing, sorting, hand-picking, coloring, cooling, and wrapping are included. Shelling, peeling, pickling, squeezing, pressing, cutting and similar operations where the form of the commodities is changed are not included. Thus, the manufacture of preserves from fruits is not included.



3. Grain, seeds or forage crops --

Cleaning, hand-picking, sorting, grading, fumigating and mixing are included. Cracking, grinding, crushing, or milling are not included. The manufacture of animal feeds and the manufacture of straw paper from wheat straw are also not included.

4. Nuts -- Sizing, grading, sorting and cleaning the unshelled nuts are included. Cracking, picking, shelling or roasting the nuts and cleaning, sorting and roasting the nut meats or manufacturing them into peanut butter are not included.

5. Tobacco -- Stripping, i.e., pulling the tobacco leaves from the stalk, tying the tobacco leaves into hands, grading, and sorting are included.

6. Wool -- Cleaning and grading are included. Curing is not included.

7. Fur -- Cleaning the raw fur is included.

8. Hemp -- Decortication is not included.

9. Nursery stock -- Cleaning and grading are included.

"Canning"

34. The term "canning" is commonly understood to mean hermetically sealing and sterilizing or pasteurizing. Such sterilization or pasteurization is an integral part of the canning process. The term includes the necessary preparatory operations performed on agricultural or horticultural commodities before the commodities are placed in bottles, cans, or

other hermetically sealed containers, as well as those of physically transferring the commodities to the bottles, cans, etc. These operations may include all types of preparations of the product such as heating, cooking, peeling, squeezing, cutting, cleaning, mixing, etc. Sealing or labeling the cans, as well as placing the cans in cases or boxes, are also included.

The canning of marmalade, chili, tamales, meat products, poultry products, vinegar, beer, etc., is not an exempt operation, however, for at least a substantial part of the ingredients used in such canning are not agricultural commodities within the meaning of Section 13 (a)(10). (See paragraph 25, fourth.)

"Making cheese or butter or other dairy products"

35. According to the "Agricultural Statistics - 1938" of the U. S. Department of Agriculture, the following constitute the vast bulk of milk and dairy products produced in this country:

- Fluid milk
- Cream
- Skimmed milk
- Whey
- Buttermilk
- Sour milk or cream
- Creamery butter
- Whey butter (made from whey cream)
- Renovated or process butter
- American cheese:
  - Whole milk
  - Part skim
  - Full skim
- Swiss cheese (including block)
- Brick and Munster cheese
- Limburger cheese
- Cream and Neufchatel cheese
- All Italian varieties of cheese
- All other varieties of cheese
- Cottage pot. and bakers' cheese

Condensed milk (sweetened)  
Case goods:  
Skimmed  
Unskimmed  
Bulk goods:  
Skimmed  
Unskimmed  
Unsweetened condensed milk (plain condensed):  
Bulk goods:  
Skimmed  
Unskimmed  
Evaporated milk (unsweetened):  
Case goods:  
Skimmed  
Unskimmed  
Concentrated skimmed milk  
Condensed or evaporated buttermilk  
Dried or powdered buttermilk  
Dried or powdered whole milk  
Dried or powdered skim milk  
Dried or powdered cream  
Dried casein (skim-milk or buttermilk product)  
Wet casein  
Malted milk  
Milk sugar (crude)  
Ice cream of all kinds

The operations performed in preparing and making the foregoing products and placing them in containers are included in the term "making cheese or butter or other dairy products".

The term does not include, however, the processing of casein, for that is not the making of a dairy product. Nor does the term include the sorting, printing, wrapping, packing and storing of butter or cheese which is bought in bulk by dealers from creameries. That does not seem to be "making . . . butter."

Other Non-exempt Operations

36. Some other operations, which, in our opinion, are not included within the exemption provided by Section 13(a)(10), are the making of cigars, cigarettes, plug, chewing, or pipe tobacco, the slaughtering, picking or

dressing of poultry, the slaughtering or dressing of livestock, the grinding of sugarcane, the roasting of coffee, and the manufacture of potato starch and potato flour.

Employees engaged in both exempt and non-exempt operations

37. Questions have been presented as to whether an employee who devotes part of his time to an activity described in this section and part of his time to a non-exempt operation is entitled to the benefit of the exemption. It is our opinion that in such case the employee is not entitled to the exemption. Of course, if the employee is engaged in certain workweeks in only the exempt operation, he is entitled to the exemption during such workweeks.

Manufacture of packages or containers

38. The manufacture of packages or containers used in the shipment of agricultural or horticultural commodities is not among the practices described in either Section 7(c) or Section 13(a)(10), regardless of how necessary such manufacture may be to the distribution of the commodities mentioned in said sections. An amendment to the Act, which was introduced on the Floor of the House, designed to exempt the employees engaged in such manufacture, was rejected.