

January 22, 2004

TO: State Directors
Rural Development

ATTENTION: Rural Housing Program Directors,
Multi-Family Housing Program Directors,
Multi-Family Housing Coordinators, and
Rural Development Managers

FROM: Arthur A. Garcia (*Signed by James C. Alsop*) *for*
Administrator
Rural Housing Service

SUBJECT: Section 514/516 Farm Labor Housing
Clarifying the Definition of "Farm Labor"

PURPOSE/INTENDED OUTCOME:

Various states have expressed confusion over the section 514/516 Farm Labor Housing Program definition of "farm labor." The purpose of this Administrative Notice (AN) is to provide guidance and to clarify what types of work are, and are not, considered to be "farm labor."

COMPARISON WITH PREVIOUS AN:

There currently is no existing AN on this subject.

IMPLEMENTATION RESPONSIBILITIES:

State Directors should ensure that Multi-Family Housing (MFH) servicing officials fully understand the contents of this AN and use this clarification to ensure program compliance.

EXPIRATION DATE:
January 31, 2005

FILING INSTRUCTIONS:
Preceding RD Instruction 1944-D

Background

The purpose of the Rural Housing Service's (RHS) Farm Labor Housing (FLH) program is to provide decent, safe, and sanitary housing for "domestic farm labor." The Housing Act of 1949, which authorizes the FLH program, provides the following definition of *domestic farm labor*:

*" . . . any person (and the family of such person) who receives a substantial portion of his or her income from **primary production of agricultural or aquacultural commodities or the handling of such commodities in the unprocessed stage**, without respect to the source of employment, except that (A) such person shall be a citizen of the United States or a person legally admitted for permanent residence; (B) such term includes any person (and the family of such person) who is retired or disabled, but who was domestic farm labor at the time of retirement or becoming disabled;..."*

This statutory definition requires that one of two requirements be met concerning a person's income. They must receive a substantial portion of their income from either the "primary production of agricultural or aquacultural commodities" or from "the handling of such commodities in the unprocessed stage." Further guidance is provided by 7 CFR 1944.153. It defines "farm labor" as follows:

*"**Farm labor.** For purposes of this subpart, farm labor includes services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity."*

The difficulty with these definitions is that they require determinations to be made concerning which activities are considered to be the handling of commodities in the unprocessed stage and which activities go beyond that and, therefore, would not be considered as farm labor.

The definition of "farm labor" contains the following three components and all 3 must be met for the activities to be considered as farm labor:

1. "Services in connection with" ...
2. One of three specific classes of work:
 - a. "cultivating the soil, raising or harvesting"; or
 - b. "catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state"; or
 - c. "delivering to storage, market, or a carrier for transportation to market or to processing" ...
3. "Any agricultural or aquacultural commodity."

All of the components of the definition focus on the nature of the work being done. There is no restriction on who employs the farm laborer. Thus, a farm laborer may be working for a farmer, a farm labor contractor, a custom agricultural service provider, a large vertically integrated corporation, etc. The nature of the worker's job is what makes him or her a farm laborer and not necessarily the nature of the employer.

It also needs to be underscored that the definition does not restrict farm labor to work done on a farm. Parts 2.b. and 2.c. of the definition expand it to include work in handling and transporting the commodity beyond the field's edge to market or to processing. There are restrictions on the types of post-harvest work included, however. Part 1 of the definition limits the worker to "services." By this, it is understood that farm labor is not employed in the manufacturing of products – i.e., the conversion of the raw agricultural commodities into a processed product. Part 3 of the definition further confirms this, by limiting the work to services relating directly to an agricultural "commodity." Finally, Part 2.b. of the definition clearly encompasses only types of labor on a commodity that leave the commodity "in its unmanufactured state."

A good way to understand the definition is to bear in mind the sequence of activities in the agricultural economy. Fundamentally, it consists of five stages:

1. The raising of the commodity on the farm;
2. The commodity's transportation after harvest;
3. The commodity's post-harvest handling, storage, and packaging;
4. The delivery to market; and, finally,
5. The market itself – which may either be a wholesale or retail market (if the commodity is a fresh market commodity) or a food processing manufacturer (if the commodity is a processing commodity).

Each of the first 4 stages meet the regulatory definition of "farm labor" but the fifth stage does not.

An Important Distinction – Post-Harvest Handling vs. Manufacturing

There has been some confusion over whether certain jobs are in Stage 3 (and therefore eligible) or in Stage 5 (and therefore ineligible) because of the mention of "drying, packing, grading, storing, or preserving" in Part 2.b. of the definition. Although these types of activities do occur in both stages, the definition does not include the processing of commodities into products that occurs in Stage 5. Rather, Parts 1, 2.b., and 3 of the definition plainly restrict farm labor from being involved in the "manufacturing" of a product. The type of activities included in Part 2.b. are post-harvest, pre-market handling and preservation activities only – wherein the commodity is sorted and then safely held for subsequent delivery to processing or market.

To distinguish between post-harvest handling and manufacturing, it is often helpful to consider the condition that the commodity is in when the laborer does his or her work. If the commodity is in an "unmanufactured state", the associated work is probably farm labor; if it is in a "manufactured state", it is not.

A commodity in an “unmanufactured state” is essentially raw produce in its natural state – still “the way that nature made it.” Implicit in Part 2.b. of the definition is that produce can remain in this unmanufactured state even though it has been handled, dried, graded, packed, stored, and preserved. This is because all of these activities do not necessarily change the fundamental nature of the commodity. Thus, activities of the following three types are included in farm labor:

1. Sorting produce and placing it in containers. When it is harvested and transported from the field, a commodity must be containerized in some fashion. Frequently, commodities go through several sequential stages of sorting, grading, and packing. However, the mere fact that a commodity is in a particular container or package does not change the nature of the commodity itself. Produce in a bag, tray, basket, bunch, box, bin, or wrap is still unmanufactured.
2. Handling to preserve the commodity. Actions such as cleaning, washing, and waxing fruits and vegetables; drying grain or prunes for safe storage; and holding produce in control atmosphere storage – all are examples of services that do not change the essentially unmanufactured state of the commodity. They merely allow the commodity to be stored safely and preserved.
3. Handling to extract the commodity, without acting on the commodity itself. Actions such as removing the hull from almonds and walnuts, or the tops from carrots are examples. In these cases, extraneous parts of the commodity are removed, but the commodity itself is unchanged and unmanufactured.

On the other hand, “manufacturing” a commodity means acting on the commodity itself, usually with tools, so as to change the fundamental nature of the commodity from that which it had when it was taken from the farm. Examples of manufacturing activities include crushing, cutting, chopping, dicing, slicing, pitting, blending, pureeing, juicing, drying, dehydrating, freeze-drying, expressing, flavoring, heating, freezing, cooking, steaming, roasting, slaughtering, butchering, pasteurizing, and churning. Thus, canneries, wineries, slaughterhouses, creameries, frozen food plants, salad mix plants, and other such food processing plants all convert the raw commodity into a manufactured state. Workers at these facilities are not performing farm labor as defined in 7 CFR part 1944, subpart D. They are food processing workers.

Other Distinctions

Another distinction is that “farm labor” ceases once the unmanufactured commodity is delivered “to market or to processing.” Once a commodity is delivered to the premises of a food processor, “manufacturing” of the commodity begins. All work performed there is directed toward the manufacturing of the end product. Thus, the factory’s receiving gate is where farm labor ends. All workers at a food processing plant – regardless of how early in the manufacturing process they handle the raw agricultural commodity – are engaged in processing and not in farm labor. Just as farm labor is not involved in manufacturing, it is not involved in wholesaling or retailing. If the market destination of a commodity is a produce wholesaler’s warehouse or a retail grocery store’s produce department, then this is the point where non-farm labor takes over.

When dealing with vertically-integrated farm operations (where the same firm both raises, harvests, handles, stores, and then processes and/or markets the crop), it may be necessary to determine the specific job that the worker does. Many times, one worker within a company or facility may be classified under the definition as a farmworker and another employee working in the same facility is not. Support personnel who may work in a facility with farmworkers but do not perform “farm labor” duties are not eligible. For example, a custodian who sweeps the floor of a packing house and performs no work directly with the commodity would not be defined as a farmworker, whereas his coworkers who sort, clean, pack, or load the commodity would.

As additional guidance, Attachment 1 provides a number of general work categories. A further discussion of “farm labor” on a commodity-by-commodity basis is provided by Attachment 2.

There are, of course, a number of other FLH eligibility factors besides the mere involvement of a worker in “farm labor.” These are covered in detail in 7 CFR part 1944, subpart D. Should you encounter problems or have questions concerning this notice, please contact the Multi-Family Housing Processing Division at (202) 720-1604.

Attachment 1: Presence of “farm labor” in stages of the agricultural economy

Attachment 2: Presence of “farm labor” in selected agricultural enterprises

Attachment 1: Presence of “farm labor” in stages of the agricultural economy

Stage 1. Raising the commodity on the farm.

Eligible activities include:

Field workers – hand work, field preparation, planting, irrigating, weeding, spraying, thinning, picking, pruning, loading, flagman, livestock caretakers, milkers

Agricultural equipment operators – tractors, sprayers (including aerial sprays), harvesters, combines

Professional crop services – agronomists, veterinarians, pest advisors, orchard managers

Ineligible activities include:

Support activities – mechanics, chemical handlers, bookkeepers, farm labor contractors

Agricultural suppliers – seed, chemical, equipment, and supply dealers

Professional support services – bookkeepers, attorneys, financial consultants

Stage 2. Transporting the commodity after harvest.

Eligible activities include:

Harvester/combine operators

Truck drivers

Loading and unloading commodities prior to processing

Ineligible activities include:

Fuel dealers

Truck mechanics

Truck dispatchers

Stage 3. Post-harvest handling, storage, and packaging.

Eligible activities include:

Boxing, crating, loading and unloading produce, hulling nuts, drying grain

Working in a post-harvest commodity storage facility

Ineligible activities include:

Handling which constitutes marketing or manufacturing (see Stage 5 below)

Stage 4. Delivery to market or processing.

Eligible activities include:

Truck drivers, loading and unloading commodities prior to processing

Ineligible activities include:

Fuel dealers

Off-farm truck mechanics

Truck dispatchers

Trucking processed agricultural products

Stage 5. Processing or marketing.

Ineligible activities include:

Processing plant workers – canneries, salad mix, creameries, frozen foods, dried fruit, slaughterhouse

Produce wholesalers and wholesale warehouse workers

Grocery store workers – produce department

Restaurant workers

Auction yard workers

Attachment 2: Presence of “farm labor” in selected agricultural enterprises

Enterprise	Eligible activities	Ineligible activities
Aquaculture	Seeding, care, management, or harvest of fish, shellfish, & other aquatic organisms	Seafood Distributors/Wholesalers Grocery Restaurant
Bees	Hive care and management Honey extraction	Confection manufacturing
Berries	Field work and harvest, including field pack Sorting, packing, and storage	Produce wholesalers Juicing
Cattle	Herd management Feedlot	Auction yard Slaughterhouse
Cotton	Field work and harvest Pre-gin storage	Ginning
Dairy	Milking barn Herd care and management	Creamery Cheese production
Eggs	Layer flock management Egg sorting, grading, and packing	Egg yolk separation
Fruit trees – avocados, dates	Grove operations and harvest Sorting, packing, and storage	Guacamole production
Fruit trees – citrus	Grove operations and harvest Sorting, packing, and storage	Juicing Canning
Fruit trees – figs	Orchard operations and harvest Sorting, packing, drying and storage	Fig confections
Fruit trees – olives	Orchard operations and harvest Sorting, packing, and storage	Brine operations Cannery operations
Fruit trees – apples, kiwis, peaches, pears, and plums	Orchard operations and harvest Sorting, packing, and storage	Cannery operations Freezer operations Drying operations
Fruit trees – prunes (dried plums)	Orchard operations and harvest Sorting, packing, drying and storage	Re-hydrating and processing Cannery operations
Garlic	Field work and harvest Sorting, packing, and storage	Wholesale produce operation Drying & dehydrating operations
Grain – barley, corn, oats, rice, wheat	Field work and harvest Grain drying and bulk storage	Milling Malt production
Grapes – raisins	Vineyard work, including field dry & pack Sorting, packing, and storage	Re-hydrating and processing Cannery operations
Grapes – table	Vineyard work and harvest Boxing grapes	Wholesale produce operation
Grapes – wine	Vineyard work and harvest	Grape crushing and fermenting
Hay	Hay production and harvest Hay baling, stacking, and storage Silage production by farmer	Hay compressor or pelletizer operation Feed mix preparation Hay broker Feed store
Melons	Field work and harvest, including field pack Sorting, packing, and storage	Wholesale produce operations
Nurseries	Field and greenhouse work Sorting and packing for shipment	Florists Retail nurseries and garden centers
Nut trees – almonds, walnuts	Orchard operations and harvest Hulling	Shelling Expressing oils Roasting and making nut products
Oilseeds	Field work and harvest Storage in bulk	Oil expresser operations
Potatoes	Field work and harvest Storage in bulk in cellars Packing and bagging at potato shed	Potato chipping
Poultry	Poultry production	Hatcheries/Slaughterhouse/Processing Plant

Seed production	Field work and harvest Sorting, packing, and storage	Seed certification
Sheep	Flock management Shearing and wool storage	Auction yard Slaughterhouse Yarn production
Sugar beets	Field work and harvest	Sugar refineries
Vegetables for fresh market (artichokes, asparagus, broccoli, carrots, cauliflower, celery, lettuce, greens, mushrooms, onions, peppers, tomatoes)	Field work and harvest, including field pack Sorting, packing, and storage	Produce wholesalers Salad mix operations
Vegetables for processing (artichokes, asparagus, broccoli, carrots, cauliflower, celery, greens, mushrooms, onions, peppers, tomatoes)	Field work and harvest, including field pack	Cannery operations Freezer operations Drying operations

In all cases, the trucker who hauls the agricultural commodity from the site of the eligible activity to the site of the ineligible activity is considered to be engaged in farm labor.