

## ATTACHMENT 12-A CLARIFYING THE DEFINITION OF “FARM LABOR”

### 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 laborers.” The Housing Act of 1949, which authorizes the FLH program, provides the following definition of a *domestic farm laborer*:

“...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;...”

Section 514(f) (3) of the Housing Act of 1949 (42 U.S.C. 1484(f) (3)) was amended on June 18, 2008 to expand the definition of domestic farm labor to include processing workers by deleting “or the handling of such commodities in the unprocessed stage”, and replacing it with “or the handling of agricultural or aquacultural commodities in the unprocessed stage, or the processing of agricultural or aquacultural commodities”. The definition now reads:

“...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 agricultural or aquacultural commodities in the unprocessed stage, or the processing of agricultural or aquacultural commodities , 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 farm income. Farm laborers must receive a substantial portion (refer to Attachment 6-H) of their income from either the “primary production of agricultural or aquacultural commodities” or from “the handling of agricultural or aquacultural commodities in the unprocessed stage, or the processing of agricultural or aquacultural commodities.” Further guidance is provided by 7 CFR 3560.11. It defines “farm labor” as follows:

*“Farm labor. 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 the unprocessed stage, without respect to the source of employment (but not self-employed), any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aqua cultural commodity in its unprocessed stage.”*

The definition of “farm labor” contains the following three components and all three must be met for the activities to be considered as farm labor: All of the components of the definition focus on the nature of the work being done.

1<sup>st</sup> Component: “Services in connection with...”

2<sup>nd</sup> Component: One of four specific classes of work:

- a. the “cultivating the soil, raising or harvesting”; or
- b. the “catching, netting, handling, planting, drying, packing, grading, storing, or preserving its unmanufactured state”; or in;
- c. the “delivering to storage, market, or day hauling the product for market, processing or distribution”
- d. the “working with the product in a processing facility until it is shipped for distribution”.

3<sup>rd</sup> Component: “Any agricultural or aquacultural commodity.”

There is no restriction on who employs the farm laborer. It also needs to be emphasized that the definition does not restrict farm labor to work done on a farm. Paragraphs 2.b, 2.c and 2.d. expand the definition to include working with the product in other off farm locations including, (1) in a processing facility, and (2) in handling and day hauling the commodity in an unmanufactured or manufactured state to be marketed, processed or distributed. Day hauling is the hauling of the agricultural or aquacultural commodity from the site of eligible activity to the site of eligible or ineligible activity within standard work hours.

Thus, a farm laborer may be working for a farmer, a farm labor contractor, a custom agricultural service provider, or a large vertically integrated corporation, etc. The nature of the worker’s job is what defines “farm laborer” and not necessarily the nature of the employer.

A good way to understand the definition is to bear in mind the sequence of farming activities in an agriculture enterprise. Fundamentally, it consists of five stages:

- Stage 1: The raising of the agricultural or aquacultural commodity on the farm;
- Stage 2: The transportation of the agricultural or aquacultural commodity after harvest;
- Stage 3: The post-harvest handling, storage, processing and packaging of the agricultural or aquacultural commodity;
- Stage 4: The delivery to market; and, finally,
- Stage 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).

Exhibit A identifies the presence of farm labor in five stages of an agricultural enterprise .

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### **Distinction - Post-Harvest Handling vs. Processing – Stage 3**

While both are eligible activities, to distinguish between post-harvest handling and processing, it is often helpful to consider the condition that the commodity is in when the laborer does his or her work.

An agricultural or aquacultural commodity in an “unmanufactured state” is essentially raw produce in its natural state – still “the way that nature made it.” Implicit in paragraph 2.b. is that a commodity 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 as post harvest handling:

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.

The “processing” of an agricultural or aquacultural 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 processing 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 act on the raw commodity itself and therefore, employees of such are to be considered “food processing workers”.

Another distinction is that “farm labor” ceases once the commodity is day hauled “to market or the distributor.” Thus, the distributor’s intake’ shipping gate is where farm labor ends. Farm labor is also involved in wholesaling packaging but not retail packaging. 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.

However, when dealing with vertically-integrated farm operations (where the same farm raises, harvests, handles, stores, and then processes and/or markets the crop), it may be necessary to determine the specific job an employee does. Many times, one employee within a company or facility may be classified under the definition as a “farm laborer” and another employee working in the same facility is not. These employees, who may work on a farm operation and whom do not perform “farm labor activities”, are not eligible. For example, a custodian who sweeps the floor of a packing house, or a bookkeeper who performs accounting duties in the farm office, would not be defined as a farm laborer, whereas as their coworkers, who sort, clean, pack, or load the commodity would. On the other hand, laborers providing services for nonvertically-intergrated farm operations (i.e. installing sprinklers) are eligible if employed by the farm operation.

In all cases, the trucker who day hauls the agricultural or aquaculture commodity from the site of the eligible activity to the site of the ineligible activity is considered to be engaged in farm labor. However, the trucker who day hauls the product for market or distribution must work for the processing manufacture to be eligible.

There are, of course, a number of other FLH eligibility factors besides the mere involvement of a worker in “farm labor.” For example, applicants for On-Farm Labor Housing, for processing worker housing, must meet the eligibility criteria according to the 7 CFR part 3560, subpart L section 3560.605. Other eligibility factors are covered in detail in 7 CFR part 3560, subparts L and M.

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## Exhibit A

### 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, processing 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

#### Stage 4. Delivery to market or processing.

Eligible activities include:

Truck drivers, loading and unloading commodities prior to processing  
Trucking processed agricultural products (when employed by Processing Plant)

Ineligible activities include:

Fuel dealers  
Off-farm truck mechanics  
Truck dispatchers

Stage 5. Processing or marketing.

Eligible activities include:

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

Ineligible activities include:

Grocery store workers – produce department Restaurant workers Auction yard workers produce wholesalers and wholesale warehouse workers.



Exhibit B  
Presence of “farm labor” and “processing worker” in selected agricultural enterprises

Enterprise	Farm Worker Activities	Processing Worker Activities
Aquaculture	Seeding, care, management, or harvest of fish, shellfish, & other aquatic organisms	Seafood /Wholesalers Packing
Bees	Hive care and management Honey extraction	Confection manufacturing
Berries	Field work and harvest, including field pack Sorting, packing, and storage	Produce wholesalers Packing Juicing
Cattle	Herd management Feedlot	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 and Packing Drying & dehydrating operations
Grain – barley, corn, oats, rice, wheat	Field work and harvest Grain drying and bulk storage	Milling
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 packing
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 packing
Nurseries	Field and greenhouse work  Sorting and packing for shipment	Sorting and packing for shipment
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
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