

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

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MILES E. LOCKER, *Chief Counsel*

September 14, 1998

Manuel Cunha, Jr., President  
Nisei Farmers League  
5108 Clinton Way, Suite 115  
Fresno, CA 93727

RE: Khouri Farms

Dear Mr. Cunha:

This is in response to your letter of August 5, 1998, to Labor Commissioner Jose Millan, requesting an opinion as to whether Wage Order 13-80 or 14-80 applies with respect to the cooling, packaging, labeling and sizing of eggplant at a facility located on the premises of the grower's farm. The facts set forth in your letter state that the eggplant is picked in the field, where it is placed into large tubs, which are transported to a central location on the farm. The eggplant is then placed in cold water to lower the temperature for the purpose of preventing further ripening. Due to the nature of the specific crop, which cannot be picked before it is ripe, the arrest of the ripening must occur virtually simultaneous with picking. Your letter further states that once the eggplant has been slightly cooled, it is wrapped with moistened paper, placed into boxes, and then transported to cold storage. Your letter does not specify whether the cold storage facilities are also located on the premises; whether post-storage processing (labeling and sizing) would be subject to Wage Order 13 or 8 would depend on the location. You request an opinion as to whether the water immersion, wrapping and repacking constitute a continuation of the harvesting process prior to "first processing" regulated by Wage Order 14, as opposed to

"any operation performed in a permanently fixed structure or establishment on the farm, or on a moving packing plant on the farm, for the purpose of preparing agricultural, horticultural, egg, poultry, meat, seafood, rabbit or dairy products for market when such operations are done on the premises owned or operated by the same employer who produce the products referred to herein..."  
Wage Order 13-80 Section 2(C). California Code of Regulations, Title 8, Section 1130, Paragraph 2(C).

As you know, the purpose of Wage Order 13-80 is to cover employees engaged in preparing agricultural products for market, on

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the farm, as the title indicates. The determining factor is not, however, whether the products are immediately thereafter available for purchase, either retail or wholesale. Rather the distinction is whether the preliminary post-harvest acts are contiguous thereto, such as field sorting and packing. In the instant fact situation as described by your letter, the water immersion takes place contemporaneous with the field packing of the vegetables. Moreover, the arrest of continued ripening is akin to removing the vegetables from the vines to discontinue growth. Thus the water immersion and wrapping would be covered by Wage Order 14.

Clearly, the post-cooling labeling, sizing and packing, if performed on the farm are subject to Wage Order 13. If these activities are performed off the premises, Wage Order 8 would apply. See Informational Guidelines on Interpretation of the IWC Orders, which states that final grading and packing for shipment, are covered by Order 13.

Since there are many different fact situations in this industry, many of which are specific not only to the type of crop but also to the operations of the individual farm, each such situation must be analyzed on its own facts, consistent with the underlying principles set forth hereinabove.

I hope this responds to your question. If you have any further questions, please do not hesitate to contact me.

Very truly yours,



Miles E. Locker  
Chief Counsel

cc: Jose Millan  
Tom Grogan  
Greg Rupp  
Nance Steffen