

Wage and Hour Division, Labor

§ 780.213

independent contractor or by employees of the nursery.

§ 780.208 Forest and Christmas tree activities.

Operations in a forest tree nursery such as seeding new beds and growing and transplanting forest seedlings are not farming operations. The planting, tending, and cutting of Christmas trees do not constitute farming operations. If such operations on forest products are within section 3(f), they must qualify under the second part of the definition dealing with incidental practices. (See § 780.201.)

[74 FR 26015, May 29, 2009]

§ 780.209 Packing, storage, warehousing, and sale of nursery products.

Employees of a grower of nursery stock who work in packing and storage sheds sorting the stock, grading and trimming it, racking it in bins, and packing it for shipment are employed in "agriculture" provided they handle only products grown by their employer and their activities constitute an established part of their employer's agricultural activities and are subordinate to his farming operations. Such employees are not employed in agriculture when they handle the products of other growers (*Mitchell v. Huntsville Nurseries*, 267 F. 2d 286; *Jordan v. Stark Bros. Nurseries & Orchards Co.*, 45 F. Supp. 769). Agricultural activities would typically include employees engaged in the balling and storing of shrubs and trees grown in the nursery. Where a grower of nursery stock operates, as a separate enterprise, a processing establishment or an establishment for the wholesale or retail distribution of such commodities, the employees in such separate enterprise are not engaged in agriculture (see *Walling v. Rocklin*, 132 F. 2d 3; *Mitchell v. Huntsville Nurseries*, 267 F. 2d 286). Although the handling and the sale of nursery commodities by the grower at or near the place where they were grown may be incidental to his farming operations, the character of these operations changes when they are performed in an establishment set up as a marketing point to aid the distribution of those products.

HATCHERY OPERATIONS

§ 780.210 The typical hatchery operations constitute "agriculture."

As stated in § 780.127, the typical hatchery is engaged in "agriculture," whether in a rural or city location. Where the hatchery is engaged solely in procuring eggs for hatching, performing the hatching operations, and selling the chicks, all the employees including office and maintenance workers are engaged in agriculture (see *Miller Hatcheries v. Boyer*, 131 F. 2d 283).

§ 780.211 Contract production of hatching eggs.

It is common practice for hatcherymen to enter into arrangements with farmer poultry raisers for the production of hatching eggs which the hatchery agrees to buy. Ordinarily, the farmer furnishes the facilities, feed and labor and the hatchery furnishes the basic stock of poultry. The farmer undertakes a specialized program of care and improvement of the flock in cooperation with the hatchery. The hatchery may at times have a surplus of eggs, including those suitable for hatching and culled eggs which it sells. Activities such as grading and packing performed by the hatchery employees in connection with the disposal of these eggs, are an incident to the breeding of poultry by the hatchery and are within the scope of agriculture.

§ 780.212 Hatchery employees working on farms.

The work of hatchery employees in connection with the maintenance of the quality of the poultry flock on farms is also part of the "raising" operations. This includes testing for disease, culling, weighing, cooping, loading, and transporting the culled birds. The catching and loading of broilers on farms by hatchery employees for transportation to market are agricultural operations.

§ 780.213 Produce business.

In some instances, hatcheries also engage in the produce business as such and commingle with the culled eggs and chickens other eggs and chickens which they buy for resale. In such a case that work which relates to both