

## § 780.214

the hatchery and produce types of activities would not be within the scope of agriculture.

### § 780.214 Feed sales and other activities.

In some situations, the hatchery also operates a feed store and furnishes feed to the growers. As in the case of the produce business operated by a hatchery, this is not an agricultural activity and employees engaged therein, such as truckdrivers hauling feed to growers, are not agricultural employees. Also office workers and other employees are not employed in agriculture when their duties relate to nonagricultural activities.

### § 780.215 Meaning of forestry or lumbering operations.

The term forestry or lumbering operations refers to the cultivation and management of forests, the felling and trimming of timber, the cutting, hauling, and transportation of timber, logs, pulpwood, cordwood, lumber, and like products, the sawing of logs into lumber or the conversion of logs into ties, posts, and similar products, and similar operations. It also includes the piling, stacking, and storing of all such products. The gathering of wild plants and of wild Christmas trees is included. (See the related discussion in §§ 780.205 through 780.209 and in part 788 of this chapter which considers the sec. 13(b)(28) exemption for forestry or logging operations in which not more than eight employees are employed.) Wood working as such is not included in forestry or lumbering operations. The manufacture of charcoal under modern methods is neither a forestry nor lumbering operation and cannot be regarded as agriculture.

[73 FR 77238, Dec. 18, 2008. Redesignated at 74 FR 26014, May 29, 2009]

EFFECTIVE DATE NOTE: At 74 FR 26014, May 29, 2009, § 780.201 was redesignated as § 780.215 and newly designated § 780.215 was suspended, effective June 29, 2009.

### § 780.216 Nursery activities generally and Christmas tree production.

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

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(1) Sowing seeds and otherwise propagating fruit, nut, shade, vegetable, and ornamental plants or trees, and shrubs, vines, and flowers;

(2) Handling such plants from propagating frames to the field;

(3) Planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

(b) Trees produced through the application of extensive agricultural or horticulture techniques to be harvested and sold for seasonal ornamental use as Christmas trees are considered to be agricultural or horticultural commodities. Employees engaged in the application of agricultural and horticultural techniques to produce Christmas trees as ornamental horticultural commodities such as the following are employed in agriculture:

(1) Planting seedlings in a nursery; on-going treatment with fertilizer, herbicides, and pesticides as necessary;

(2) After approximately three years, re-planting in lineout beds;

(3) After two more seasons, lifting and re-planting the small trees in cultivated soil with continued treatment with fertilizers, herbicides, and pesticides as indicated by testing to see if such applications are necessary;

(4) Pruning or shearing yearly;

(5) Harvesting of the tree for seasonal ornamental use, typically within 7 to 10 years of planting.

(c) Trees to be used as Christmas trees which are gathered in the wild, such as from forests or uncultivated land and not produced through the application of agricultural or horticultural techniques are not agricultural or horticultural commodities for purposes of sec. 3(f).

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### § 780.217 Forestry activities.

Operations in a forest tree nursery such as seeding new beds and growing and transplanting forest seedlings are not farming operations. For such operations to fall within sec. 3(f), they must qualify under the second part of