trimming of timber, the cutting, haul-
ing, and transportation of timber, logs, pulpwood, cordwood, lumber, and like products, the sawing of logs into lum-
ber or the conversion of logs into ties, posts, and similar products, and simi-
lar operations. It also includes the pil-
ing, stacking, and storing of all such products. The gathering of wild plants
and of wild or planted Christmas trees are included. (See the related discus-
sion in §§ 780.205 through 780.209 and in part 788 of this chapter which considers
the section 13(a)(13) exemption for for-
ery or logging operations in which
not more than eight employees are em-
ployed.) “Wood working” as such is not
included in “forestry” or “lumbering
operations. The manufacture of char-
coal under modern methods is neither a
“forestry” nor “lumbering” operation
and cannot be regarded as “agri-
culture.”

[74 FR 26014, May 29, 2009]

§ 780.202 Subordination to farming op-
erations is necessary for exemption.

While section 3(f) speaks of practices performed “in conjunction with” as well as “incident to” farming oper-
ations, it would be an unreasonable
construction of the Act to hold that all
practices were to be regarded as agricul-
tural if the person performing the
practice did any farming, no matter
how little, or resorted to tilling a small acreage for the purpose of qualifying for exemption (Ridgeway v. Warren, 60
F. Supp. 363 (M.D. Tenn.); in re Combs,
5 WH Cases 595, 10 Labor Cases 62,802
(M.D. Ga.)). To illustrate, where an em-
ployer owns several thousand acres of timberland on which he carries on lum-
bering operations and cultivates about 100 acres of farm land which are contig-
uous to such timberland, he would not
be engaged in agriculture so far as his forestry or lumbering operations are
concerned. In such case, the forestry or lumbering operations would clearly not
be subordinate to the farming oper-
ations but rather the principal or a
separate business of the “farmer.”

§ 780.203 Performance of operations
on a farm but not by the farmer.

Logging or sawmill operations on a
farm undertaken on behalf of the farm-
er or on behalf of the buyer of the logs
or the resulting lumber by a contract
logger or sawmill owner are not within
the scope of agriculture unless it can
be shown that these logging or sawmill
operations are clearly incidental to
farming operations on the farm on
which the logging or sawmill oper-
ations are being conducted. For ex-
ample, the clearing of additional land for
cultivation by the farmer or the prepa-
ration of timber for construction of his
farm buildings would appear to con-
stitute operations incidental to “such
farming operations.”

§ 780.204 Number of employees en-
gaged in operations not material.

The fact that the employer employs
fewer than a certain number of employ-
ees in forestry and lumbering oper-
ations does not provide a basis for their
being considered as agricultural em-
ployees. This is to be distinguished
from the exemption provided by sec-
section 13(a)(13) (discussed in part 788 of
this chapter) which is limited to em-
ployers employing not more than eight
employees in the forestry or logging
operations described therein.

NURSERY AND LANDSCAPING OPERATIONS

§ 780.205 Nursery activities generally.

The employees of a nursery who are
engaged in the following activities are
employed in “agriculture”:
(a) Sowing seeds and otherwise prop-
gating fruit, nut, shade, vegetable,
and ornamental plants or trees (but
not Christmas trees), and shrubs, vines,
and flowers;
(b) Handling such plants from propa-
gating frames to the field;
(c) Planting, cultivating, watering,
spraying, fertilizing, pruning, bracing,
and feeding the growing crop.

(74 FR 26015, May 29, 2009)

§ 780.206 Planting and lawn mowing.

(a) The planting of trees and bushes
is within the scope of agriculture
where it constitutes a step in the pro-
duction, cultivation, growing, and har-
vesting of agricultural or horticultural
commodities, or where it constitutes a
practice performed by a farmer or on a
farm as an incident to or in conjunc-
tion with farming operations (as where
it is part of the subordinate marketing
§ 780.207 Operations with respect to wild plants.

Nurseries frequently obtain plants growing wild in the woods or fields which are to be further cultivated by the nursery before they are sold by it. Obtaining such plants is a practice which is incidental to farming operations. The activities are therefore within the scope of agriculture if performed by a farmer or on a farm. Thus, employees of the nursery are engaged in agriculture when performing these activities. On the other hand, employees of an independent contractor performing these activities off the farm would not be engaged in agriculture. The transplanting of such wild plants in the nursery is performed “on a farm” and is an agricultural activity whether performed by employees of an 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 of 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.