performed by the farmer as an incident to his farming operations (Chapman v. Durkin, 214 F. 2d 360 cert. denied 348 U.S. 897; Fort Mason Fruit Co. v. Durkin, 214 F. 2d 363 cert. denied 348 U.S. 897). For further discussion of this point, see §§780.144 through 780.147; §§780.152 through 780.157.

RAISING OF LIVESTOCK, BEES, FUR-BEARING ANIMALS, OR POULTRY

§ 780.119 Employment in the specified operations generally.

Employees are employed in the raising of livestock, bees, fur-bearing animals or poultry only if their operations relate to animals of the type named and constitute the “raising” of such animals. If these two requirements are met, it makes no difference for what purpose the animals are raised or where the operations are performed. For example, the fact that cattle are raised to obtain serum or virus or that chicks are hatched in a commercial hatchery does not affect the status of the operations under section 3(f).

§ 780.120 Raising of “livestock.”

The meaning of the term “livestock” as used in section 3(f) is confined to the ordinary use of the word and includes only domestic animals ordinarily raised or used on farms. That Congress did not use this term in its generic sense is supported by the specific enumeration of activities, such as the raising of fur-bearing animals, which would be included in the generic meaning of the word. The term includes the following animals, among others: Cattle (both dairy and beef cattle), sheep, swine, horses, mules, donkeys, and goats. It does not include such animals as albino and other rats, mice, guinea pigs, and hamsters, which are ordinarily used by laboratories for research purposes (Mitchell v. Maxfield, 12 WH Cases 792 (S.D. Ohio), 28 Labor Cases 68, 781). Fish are not “livestock” (Dunkly v. Erich, 158 F. 2d 1), but employees employed in propagating or farming of fish may qualify for exemption under section 13(a)(6) or 13(b)(12) of the Act as stated in §780.109 as well as under section 13(a)(5), as explained in part 784 of this chapter.

§ 780.121 What constitutes “raising” of livestock.

The term “raising” employed with reference to livestock in section 3(f) includes such operations as the breeding, fattening, feeding, and general care of livestock. Thus, employees exclusively engaged in feeding and fattening livestock in stock pens where the livestock remains for a substantial period of time are engaged in the “raising” of livestock. The fact that the livestock is purchased to be fattened and is not bred on the premises does not characterize the fattening as something other than the “raising” of livestock. The feeding and care of livestock does not necessarily or under all circumstances constitute the “raising” of such livestock, however. It is clear, for example, that animals are not being “raised” in the pens of stockyards or the corrals of meat packing plants where they are confined for a period of a few days while en route to slaughter or pending their sale or shipment. Therefore, employees employed in these places in feeding and caring for the constantly changing group of animals cannot reasonably be regarded as “raising” livestock (NLRB v. Tovrea Packing Co., 111 F. 2d 626, cert. denied 311 U.S. 668; Walling v. Friend, 156 F. 2d 429). Employees of a cattle raisers’ association engaged in the publication of a magazine about cattle, the detection of cattle thefts, the location of stolen cattle, and apprehension of cattle thieves are not employed in raising livestock and are not engaged in agriculture.

§ 780.122 Activities relating to race horses.

Employees engaged in the breeding, raising, and training of horses on farms for racing purposes are considered agricultural employees. Included are such employees as grooms, attendants, exercise boys, and watchmen employed at the breeding or training farm. On the other hand, employees engaged in the racing, training, and care of horses and other activities performed off the farm in connection with commercial racing are not employed in agriculture. For this purpose, a training track at a racetrack is not a farm. Where a farmer is engaged in both the raising and commercial racing of race horses, the
activities performed off the farm by his
employees as an incident to racing, such as the training and care of the
horses, are not practices performed by
the farmer in his capacity as a farmer
or breeder as an incident to his raising
operations. Employees engaged in the
feeding, care, and training of horses
which have been used in commercial
racing and returned to a breeding or
training farm for such care pending
entry in subsequent races are employed
in agriculture.

§ 780.123 Raising of bees.

The term “raising of * * * bees” re-
fers to all of those activities custom-
arily performed in connection with the
handling and keeping of bees, including
the treatment of disease and the rais-
ing of queens.

§ 780.124 Raising of fur-bearing ani-
mals.

(a) The term “fur-bearing animals” has reference to animals which bear fur
of marketable value and includes,
among other animals, rabbits, silver
foxes, minks, squirrels, and muskrats.
Animals whose fur lacks marketable
value, such as albino and other rats,
mice, guinea pigs, and hamsters, are
not “fur-bearing animals” which with-
in the meaning of section 3(f).

(b) The term “raising” of fur-bearing
animals includes all those activities
customarily performed in connection
with breeding, feeding and caring for
fur-bearing animals, including the

treatment of disease. Such treatment
of disease has reference only to disease
of the animals being bred and does not
refer to the use of such animals or
their fur in experimenting with disease
or treating diseases in others. The fact
that muskrats or other fur-bearing ani-
mals are propagated in open water or
marsh areas rather than in pens does
not prevent the raising of such animals
from constituting the “raising of fur-
bearing animals.” Where wild fur-bear-
ing animals propagate in their native
habitat and are not raised as above de-
scribed, the trapping or hunting of
such animals and activities incidental
corporate are not included within section
3(f).

§ 780.125 Raising of poultry in general.

(a) The term “poultry” includes do-
mesticated fowl and game birds. Ducks
and pigeons are included. Canaries and
parakeets are not included.

(b) The “raising” of poultry includes
the breeding, hatching, propagating,
feeding, and general care of poultry.
Slaughtering, which is the antithesis of
“raising,” is not included. To con-
stitute “agriculture,” slaughtering
must come within the secondary mean-
ing of the term “agriculture.” The
temporary feeding and care of chickens
and other poultry for a few days pend-
ing sale, shipment or slaughter is not
the “raising” of poultry. However, feed-
ing, fattening and caring for poul-
try over a substantial period may con-
stitute the “raising” of poultry.

§ 780.126 Contract arrangements for
raising poultry.

Feed dealers and processors some-
times enter into contractual arrange-
ments with farmers under which the
latter agree to raise to marketable size
baby chicks supplied by the former who
also undertake to furnish all the re-
quired feed and possibly additional
items. Typically, the feed dealer or
processor retains title to the chickens
until they are sold. Under such an ar-
rangement, the activities of the farm-
ers and their employees in raising the
poultry are clearly within section 3(f).
Employees of the feed dealer or
processor, on the other hand, are not
“raising of poultry” and employees en-
gaged in them cannot be considered ag-
cultural employees on that ground.
Employees of the feed dealer or proc-
essor who perform work on a farm as
an incident to or in conjunction with
the raising of poultry on the farm are
employed in “secondary” agriculture
(see §§780.137 et seq. and Johnston v. Cot-
ton Producers Assn., 244 F. 2d 533).

§ 780.127 Hatchery operations.

Hatchery operations incident to the
breeding of poultry, whether performed
in a rural or urban location, are the
“raising of poultry” (Miller Hatcheries
v. Boyer, 131 F. 2d 283). The application
of section 3(f) to employees of hatch-
eries is further discussed in §§780.210
through 780.214.