

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 or planted Christmas trees are included. (See the related discussion in §§ 780.205 through 780.209 and in part 788 of this chapter which considers the section 13(a)(13) 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.”

[74 FR 26014, May 29, 2009]

§ 780.202 Subordination to farming operations is necessary for exemption.

While section 3(f) speaks of practices performed “in conjunction with” as well as “incident to” farming operations, it would be an unreasonable construction of the Act to hold that all practices were to be regarded as agricultural 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 employer owns several thousand acres of timberland on which he carries on lumbering operations and cultivates about 100 acres of farm land which are contiguous 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 operations 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 farmer 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 operations are being conducted. For example, the clearing of additional land for cultivation by the farmer or the preparation of timber for construction of his farm buildings would appear to constitute operations incidental to “such farming operations.”

§ 780.204 Number of employees engaged in operations not material.

The fact that the employer employs fewer than a certain number of employees in forestry and lumbering operations does not provide a basis for their being considered as agricultural employees. This is to be distinguished from the exemption provided by section 13(a)(13) (discussed in part 788 of this chapter) which is limited to employers 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 propagating fruit, nut, shade, vegetable, and ornamental plants or trees (but not Christmas trees), and shrubs, vines, and flowers;
- (b) Handling such plants from propagating frames to the field;
- (c) Planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

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§ 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 production, cultivation, growing, and harvesting 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 conjunction with farming operations (as where it is part of the subordinate marketing

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operations of the grower of such trees or bushes). Thus, employees of the nurseryman who raised such nursery stock are doing agricultural work when they plant the stock on private or public property, trim, spray, brace, and treat the planted stock, or perform other duties incidental to its care and preservation. Similarly, employees who plant fruit trees and berry stock not raised by their employer would be considered as engaged in agriculture if the planting is done on a farm as an incident to or in conjunction with the farming operation on that farm.

(b) On the other hand, the planting of trees and bushes on residential, business, or public property is not agriculture when it is done by employees of an employer who has not grown the trees and bushes, or who, if he has grown them, engages in the planting operations as an incident, not to his farming operations, but to landscaping operations which include principally the laying of sod and the construction of pools, walks, drives, and the like.

(c) The mowing of lawns, except where it can be considered incidental to farming operations, is not agricultural work.

§ 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.

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§ 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.