

### §780.113

in "agriculture." In addition to such products of the soil, however, the term includes domesticated animals and some of their products such as milk, wool, eggs, and honey. The term does not include commodities produced by industrial techniques, by exploitation of mineral wealth or other natural resources, or by uncultivated natural growth. For example, peat humus or peat moss is not an agricultural commodity. *Wirtz v. Ti Ti Peat Humus Co.*, 373 f(2d) 209 (C.A.4).

#### §780.113 Seeds, spawn, etc.

Seeds and seedlings of agricultural and horticultural plants are considered "agricultural or horticultural commodities." Thus, since mushrooms and beans are considered "agricultural or horticultural commodities," the spawn of mushrooms and bean sprouts are also so considered and the production, cultivation, growing, and harvesting of mushroom spawn or bean sprouts is "agriculture" within the meaning of section 3(f).

#### §780.114 Wild commodities.

Employees engaged in the gathering or harvesting of wild commodities such as mosses, wild rice, burls and laurel plants, the trapping of wild animals, or the appropriation of minerals and other uncultivated products from the soil are not employed in "the production, cultivation, growing, and harvesting of agricultural or horticultural commodities." However, the fact that plants or other commodities actually cultivated by men are of a species which ordinarily grows wild without being cultivated does not preclude them from being classed as "agricultural or horticultural commodities." Transplanted branches which were cut from plants growing wild in the field or forest are included within the term. Cultivated blueberries are also included.

#### §780.115 Forest products.

Trees grown in forests and the lumber derived therefrom are not "agricultural or horticultural commodities." Christmas trees, whether wild or planted, are also not so considered. It follows that employment in the production, cultivation, growing, and har-

### 29 CFR Ch. V (7-1-06 Edition)

vesting of such trees or timber products is not sufficient to bring an employee within section 3(f) unless the operation is performed by a farmer or on a farm as an incident to or in conjunction with his or its farming operations. On the latter point, see §§780.160 through 780.164 which discuss the question of when forestry or lumbering operations are incident to or in conjunction with farming operations so as to constitute "agriculture." For a discussion of the exemption in section 13(a)(13) of the Act for certain forestry and logging operations in which not more than eight employees are employed, see part 788 of this chapter.

#### §780.116 Commodities included by reference to the Agricultural Marketing Act.

(a) Section 3(f) expressly provides that the term "agricultural or horticultural commodities" shall include the commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141-1141j). Section 15(g) of that Act provides: "As used in this act, the term 'agricultural commodity' includes, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producers of the crude gum (oleoresin) from which derived: Gum spirits of turpentine, and gum resin, as defined in the Naval Stores Act, approved March 3, 1923" (7 U.S.C. 91-99). As defined in the Naval Stores Act, "'gum spirits of turpentine' means spirits of turpentine made from gum (oleoresin) from a living tree" and "'gum rosin' means rosin remaining after the distillation of gum spirits of turpentine." The production of these commodities is therefore within the definition of "agriculture."

(b) Since the only oleoresin included within section 15(g) of the Agricultural Marketing Act is that derived from a living tree, the production of oleoresin from stumps or any sources other than living trees is not within section 3(f). If turpentine or rosin is produced in any manner other than the processing of crude gum from living trees, as by digging up pine stumps and grinding them or by distilling the turpentine