

**§ 780.210**

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.

HATCHERY OPERATIONS

**§ 780.210 The typical hatchery operations constitute "agriculture."**

As stated in § 780.127, the typical hatchery is engaged in "agriculture," whether in a rural or city location. Where the hatchery is engaged solely in procuring eggs for hatching, performing the hatching operations, and selling the chicks, all the employees including office and maintenance workers are engaged in agriculture (see *Miller Hatcheries v. Boyer*, 131 F. 2d 283).

**§ 780.211 Contract production of hatching eggs.**

It is common practice for hatcherymen to enter into arrangements with farmer poultry raisers for the production of hatching eggs which the hatchery agrees to buy. Ordinarily, the farmer furnishes the facilities, feed and labor and the hatchery furnishes the basic stock of poultry. The farmer undertakes a specialized program of care and improvement of the flock in cooperation with the hatchery. The hatchery may at times have a surplus of eggs, including those suitable for hatching and culled eggs which it sells. Activities such as grading and packing performed by the hatchery employees in connection with the disposal of these eggs, are an incident to the breeding of poultry by the hatchery and are within the scope of agriculture.

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

**§ 780.212 Hatchery employees working on farms.**

The work of hatchery employees in connection with the maintenance of the quality of the poultry flock on farms is also part of the "raising" operations. This includes testing for disease, culling, weighing, cooping, loading, and transporting the culled birds. The catching and loading of broilers on farms by hatchery employees for transportation to market are agricultural operations.

**§ 780.213 Produce business.**

In some instances, hatcheries also engage in the produce business as such and commingle with the culled eggs and chickens other eggs and chickens which they buy for resale. In such a case that work which relates to both 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.

**Subpart D—Employment in Agriculture That Is Exempted From the Minimum Wage and Overtime Pay Requirements Under Section 13(a)(6)**

STATUTORY PROVISIONS

**§ 780.300 Statutory exemptions in section 13(a)(6).**

Section 13(a)(6) of the Act exempts from the minimum wage requirements of section 6 and from the overtime pay requirements of section 7:

Any employee employed in agriculture: (A) If such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more