

§ 780.119

the farm. Off-the-farm transportation can only be “agriculture” when 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), 29 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 sec-

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tion 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” refers to all of those activities customarily performed in connection with the handling and keeping of bees, including the treatment of disease and the raising of queens.

§ 780.124 Raising of fur-bearing animals.

(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 within 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 animals 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-bearing animals propagate in their native habitat and are not raised as above described, the trapping or hunting of such animals and activities incidental

thereto are not included within section 3(f).

§ 780.125 Raising of poultry in general.

(a) The term “poultry” includes domesticated 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 constitute “agriculture,” slaughtering must come within the secondary meaning of the term “agriculture.” The temporary feeding and care of chickens and other poultry for a few days pending sale, shipment or slaughter is not the “raising” of poultry. However, feeding, fattening and caring for poultry over a substantial period may constitute the “raising” of poultry.

§ 780.126 Contract arrangements for raising poultry.

Feed dealers and processors sometimes enter into contractual arrangements 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 required feed and possibly additional items. Typically, the feed dealer or processor retains title to the chickens until they are sold. Under such an arrangement, the activities of the farmers and their employees in raising the poultry are clearly within section 3(f). The activities of the feed dealer or processor, on the other hand, are not “raising of poultry” and employees engaged in them cannot be considered agricultural employees on that ground. Employees of the feed dealer or processor 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. Cotton Producers Assn.*, 244 F. 2d 553).

§ 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 hatcheries