

FLSA-589

November 7, 1975

This is in reply to your letter of October 2, 1975, asking whether agricultural employment under the Fair Labor Standards Act would include such work by employees of a nursery and landscape business as digging up trees that are bought from various sources, such as other nurseries, golf courses, farmers, etc., during the winter months and transporting them to a nursery. The employees do no other work than dig up these trees. Others prepare the trees for transportation and transport them to the nursery. When the trees reach the nursery most of them are hauled in temporarily so that they can later be transplanted to the sites of various landscaping jobs. Some are planted in the nursery for future growth.

As noted in 29 CFR 780.303 and 780.403, sections 13(a)(6) and 13(b)(12) of the Act apply to "any employees in agriculture...". The scope of the term "agriculture" as defined in section 3(f) of the Act is explained in 29 CFR 780.205 through 780-209 as it relates to nursery and landscaping operations.

Obtaining trees growing wild in woods or fields or from farms or other nurseries, which are to be further cultivated by the nursery before they are sold by it, is a practice incidental to farming operations. The activities, therefore, are within the scope of agriculture if performed by a farmer or on a farm. Thus, employees of a nursery are engaged in agriculture when obtaining trees, including the preparation for transportation and transportation incidental to obtaining such trees.

Obtaining trees which are to be hauled in temporarily so that they can be readily transported to the site of a landscaping job is an activity related not to farming operations, but to landscaping operations. Therefore, obtaining trees for temporarily hauling in and the transportation incidental to obtaining such trees for landscaping is not within the scope of agriculture.

The minimum wage and overtime pay provisions of sections 6(a)(5), 13(a)(6) and 13(b)(12) apply only when an employee "is employed in agriculture" for an entire workweek (see sections 780.10 and 780.11).

Sincerely,

Warren B. Landis
Acting Administrator
Wage and Hour Division

Enclosure

