

## § 780.502

tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco.

### § 780.502 Legislative history of exemption.

The exemption for shade-grown tobacco workers was added to the Act by the Fair Labor Standards Amendments of 1961. The intent of the committee which inserted the provision in the amendments which were reported to the House (see H. Rept. No. 75, 87th Cong., first sess., p. 29) was to exclude from the minimum wage and overtime requirements of the Act "employees engaged prior to the stemming process in processing shade-grown tobacco for use as cigar wrapper tobacco, but only if the employees were employed in the growing and harvesting of such tobacco". The Report also pointed out that "such operations were assumed to be exempt prior to the case of *Mitchell v. Budd*, 350 U.S. 473 (1956), as a continuation of the agricultural process occurring in the vicinity where the tobacco was grown". The original provision in the House-passed bill was in the form of an amendment to the Act's definition of agriculture. In that form, it would have altered the effect of the Supreme Court's decision in the case of *Mitchell v. Budd*, cited above, by bringing the described employees under the exemption provided for agriculture in section 13(a)(6) of the Act. (H. Rept. No. 75, p. 26, and H. Rept. No. 327, p. 17, 87th Cong., first sess.) The Conference Committee, in changing the provision to provide a separate exemption, made it clear that it was "not intended by the committee of conference to change \* \* \* by the exemption for employees engaged in the named operations on shade-grown tobacco the application of the Act to any other employees. Nor is it intended that there be any implication of disagreement by the conference committee with the principles and tests governing the application of the present agricultural exemption as enunciated by the courts." (H. Rept. No. 327, supra, p. 18.)

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### § 780.503 What determines the application of the exemption.

The application of the section 13(a)(14) exemption depends upon the nature of the work performed by the individual employee for whom exemption is sought and not upon the character of the work of the employer. A determination of whether an employee is exempt therefore requires an examination of that employee's duties. Some employees of the employer may therefore be exempt while others may not.

#### REQUIREMENTS FOR EXEMPTION

### § 780.504 Basic conditions of exemption.

Under section 13(a)(14) of the Act all the following conditions must be met in order for the exemption to apply to an employee:

(a) He must work on "shade-grown tobacco."

(b) He must be an "agricultural employee" employed "in the growing and harvesting" of shade-grown tobacco.

(c) He must be engaged "in the processing \* \* \* of such tobacco" and this processing must be both "prior to the stemming process" and to prepare the tobacco "for use as cigar wrapper tobacco." These requirements are discussed in the following sections of this subpart.

#### SHADE-GROWN TOBACCO

### § 780.505 Definition of "shade-grown tobacco."

Shade-grown tobacco to which the exemption applies is Connecticut Valley Shade-Grown U.S. Type 61 and Georgia-Florida Shade-Grown U.S. Type 62.

### § 780.506 Dependence of exemption on shade-grown tobacco operations.

The exemption provided by section 13(a)(14) of the Act is limited to the performance of certain operations with respect to the specified commodity, shade-grown tobacco. Work in connection with any other kind of tobacco, or any other commodity, including any other farm product, is not exempt under this section. An employee must be an agricultural employee variously