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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

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employed in the growing and harvesting of "shade-grown tobacco" and in the described processing of "such tobacco" in order that the section 13(a)(14) exemption may apply.

§ 780.507 "Such tobacco."

To be within the exemption, the processing activities with respect to shade-grown tobacco must be performed by an employee who has been employed in growing and harvesting "such tobacco." The term "such tobacco" clearly is limited to the specified type of tobacco named in the section, that is, shade-grown tobacco. While a literal interpretation of the term "such tobacco" might lead to a conclusion that the exemption extends only to the processing of the tobacco which the employee grew or harvested, it appears from the legislative history that the intent was to extend the exemption to the processing of such tobacco which may be viewed "as a continuation of the agricultural process, occurring in the vicinity where the tobacco was grown." (H. Rept. 75, 87th Cong., first sess., p. 26.) Thus, it appears that the term "such tobacco" has reference to the local crop of shade-grown tobacco, raised by other local growers as well as by the processor, and which is being processed as a continuation of the growing and harvesting of such crop in the vicinity.

§ 780.508 Application of the exemption.

(a) As indicated in § 780.504, an employee qualifies for exemption under section 13(a)(14) only if he is an agricultural employee employed in the growing and harvesting of shade-grown tobacco and is engaged in the processing of such tobacco. However, both operations do not have to be performed during the same workweek. Section 13(a)(14) of the Act is intended to exempt any agricultural employee from the minimum wage and overtime provisions of the Act in any workweek when he is employed in the growing and harvesting of shade-grown tobacco, irrespective of the provisions of section 13(a)(6) and whether or not in such workweek he is also engaged in the processing of the tobacco as described in section 13(a)(14). The exemption would also apply in any workweek in

which the employee, who grew and harvested shade-grown tobacco, is exclusively engaged in such processing.

(b) An employee so employed in any workweek is considered to be excluded from the "employee employed in agriculture" whose exemption from the pay provisions of the Act is governed by section 13(a)(6). Therefore, his man-days of exempt labor under section 13(a)(14) in any such workweek are not to be counted as man-days of agricultural labor within the meaning of section 3(u) of the Act and to which section 13(a)(6) refers.

(c) However, since section 3(u) defines man-day to mean "any day during which an employee performs any agricultural labor for not less than 1 hour" in the case of an employee who qualifies for the exemption in some workweeks but not in others under section 13(a)(14), all such man-days of his agricultural labor in the workweeks when he is not exempt under section 13(a)(14) will be counted. In this connection, the performance of some agricultural work which does not relate to shade-grown tobacco by an agricultural employee of a grower of such tobacco will not be considered as the performance of nonexempt work outside the section 13(a)(14) exemption in any workweek in which such an employee is employed by such an employer in the growing and harvesting of such tobacco or in its processing prior to stemming, or both, and engages in other agricultural work only incidentally or to an insubstantial extent.

§ 780.509 Agriculture.

The definition of "agriculture," as contained in section 3(f) of the Act, is discussed in subpart B of this part 780. The principles there discussed should be referred to as guides to the meaning of the terms "agricultural employee" and "growing and harvesting" as used in section 13(a)(14).

§ 780.510 "Any agricultural employee."

The section 13(a)(14) exemption applies to "any agricultural employee" who is employed in the specified activities. The term "any agricultural employee" includes not only agricultural employees of the tobacco grower but also such employees of other farmers