

should maintain separate facilities for storing and supplying water for domestic use, it is clear that employees employed in connection with the maintenance or operation of such facilities would not be employed in activities to which the exemption applies. Water used for watering livestock raised by a farmer is "for agricultural purposes."

§ 780.409 Employment "in connection with the operation or maintenance" is exempt.

The irrigation exemption provided by section 13(b)(12) applies to "any employee employed * * * in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways" of an irrigation system which qualifies for the exemption. The employee, to be exempt, must be employed "in connection with the operation or maintenance" of the named facilities; other employees of the irrigation system, not employed in connection with the named activities, are not exempt. The exemption may apply to employees engaged in insect, rodent, and weed control along the canals and waterways of the irrigation system.

Subpart F—Employment or Agricultural Employees in Processing Shade-Grown Tobacco; Exemption From Minimum Wage and Overtime Pay Requirements Under Section 13(a)(14)

INTRODUCTORY

§ 780.500 Scope and significance of interpretative bulletin.

Subpart A of this part 780 and this subpart F together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(a)(14) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the minimum wage and overtime pay provisions of the Act for certain agricultural employees engaged in the processing, prior to stemming, or shade-grown tobacco for use as cigar wrapper tobacco. As appears more fully in subpart A, interpretations in this bulletin with respect to provisions of the Act

discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The exemptions provided in section 13(a)(6) of the Act for employees employed in agriculture is not discussed in this subpart except in its relation to section 13(a)(14). The meaning and application of the section 13(a)(6) exemption is fully considered in subpart D of this part 780.

§ 780.501 Statutory provision.

Section 13(a)(14) of the Fair Labor Standards Act exempts from the minimum wage requirements of section 6 of the Act and from the overtime provisions of section 7:

Any agricultural employee employed in the growing and harvesting of shade-grown 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

§ 780.503

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.)

§ 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.

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

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 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.