

§ 780.512 “Employed in the growing and harvesting.”

Section 13(a)(14) exempts processing operations on shade-grown tobacco only when performed by agricultural employees “employed in the growing and harvesting” of such tobacco. The use of the term “and” in the phrase “growing and harvesting” may be in recognition of the fact that in the raising of shade-grown tobacco the two operations are typically intermingled; however, it is not considered that the word “and” would preclude a determination on the particular facts that an employee is qualified for the exemption if he is employed only in “growing” or only in “harvesting.” Employment in work other than growing and harvesting of shade-grown tobacco will not satisfy the requirement that the employee be employed in growing and harvesting, even if such work is on shade-grown tobacco and constitutes “agriculture” as defined in section 3(f) of the Act. For example, delivery of the tobacco by an employee of the farmer to the receiving platform of the bulking plant would be a “delivery to market” included in “agriculture” when performed by the farmer as an incident to or in conjunction with his farming operations (*Mitchell v. Budd*, 350 U.S. 473), but it would not be part of “growing and harvesting.”

§ 780.513 What employment in growing and harvesting is sufficient.

To qualify for exemption the employee must be one of those who “were employed in the growing and harvesting of such tobacco” (H. Rept. No. 75, 87th Cong., First Sess., p. 29) and one whose processing work could be viewed as a “continuation of the agricultural process, occurring in the vicinity where the tobacco was grown.” (Ibid. p. 26.) This appears to require that such employment be in connection with the crop of shade-grown tobacco which is being processed; it appears to preclude an employee who has had no such employment in the current crop season from qualifying for this exemption even if in some past season he was employed in growing and harvesting such tobacco. Bona fide employment in growing and harvesting shade-grown tobacco would also appear to be nec-

essary. An attempt to qualify an employee for the processing exemption by sending him to the fields for growing or harvesting work for a few hours or days would not establish the bona fide employment in growing and harvesting contemplated by the Act. It would not seem sufficient that an employee has been engaged in growing or harvesting operations only occasionally or casually or incidentally for a small fraction of his work time. (See *Walling v. Haden*, 153 F. 2d 196.) Employment for a significant period in the current crop season or on some regular recurring basis during this season would appear to be necessary before an agricultural employee could reasonably be described as one “employed in the growing and harvesting of shade-grown tobacco.” The determination in a doubtful case will, therefore, require a careful examination and consideration of the particular facts.

§ 780.514 “Growing” and “harvesting.”

The general meaning of “growing” and “harvesting” of agricultural commodities is explained in §§ 780.117 and 780.118 of subpart B of this part 780, where the meaning of these terms as used in the Act’s definition of agriculture is fully discussed. As there indicated, these terms include the actual raising of the crop and the operations customarily performed in connection with the removal of the crops by the farmer from their growing position, but do not extend to operations subsequent to and unconnected with the actual process whereby the agricultural commodities are severed from their attachment to the soil. Thus, while transportation to a concentration point on the farm may be included, “harvesting” never extends to transportation or other operations off the farm. The “growing” of shade-grown tobacco is considered to include such work as preparing the soil, planting, irrigating, fertilizing, and other activities. This type of tobacco requires special cultivation and is grown in fields that are completely enclosed and covered with cheesecloth shade. The leaves of the plant are picked in stages, as they mature. The leaves are taken immediately to a tobacco barn, located on the farm, where they are strung on