

sticks and dried by heat. Before the drying process is completed, the leaves are allowed to absorb moisture. Then they are dried again. It is not until the end of this drying operation that the leaves are packed in boxes and taken from the farm to a building plant for further processing (see *Mitchell v. Budd*, 350 U.S. 473). Under the general principles stated above, "harvesting" of shade-grown tobacco is considered to include the removal of the tobacco leaves from the plant and moving the tobacco from the field to the drying barn on the farm, together with the performance of other work as a necessary part of such operations. Subsequent operations such as the drying of the tobacco in the barn on the farm and packing of the tobacco for transportation to the bulking plant are not included in "harvesting."

EXEMPT PROCESSING

§ 780.515 Processing requirements of section 13(a)(14).

When it has been determined that an employee is an "agricultural employee employed in the growing and harvesting of shade-grown tobacco," to whom section 13(a)(14) of the Act may apply, it then becomes necessary to ascertain whether he is "engaged in the processing * * * of such tobacco, prior to the stemming process, for use as Cigar-wrapper tobacco."

§ 780.516 "Prior to the stemming process."

The exemption provided by section 13(a)(14) applies only to employees whose processing operations on shade-grown tobacco are performed "prior to the stemming process." (See H. Rept. No. 75, 87th Cong., first sess., p. 26). This means that an employee engaged in stemming, the removal of the midrib from the tobacco leaf (*McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n.*, 80 F. Supp. 953, affirmed 181 F. 2d 697), or in any operations on the tobacco which are performed after stemming has begun will not come within the exemption. Stemming and all subsequent operations are nonexempt work.

§ 780.517 "For use as Cigar-wrapper tobacco."

The phrase "for use as Cigar-wrapper tobacco" limits the type of end product which may be produced by the exempt operations. As its name indicates, cigar-wrapper tobacco is used as a cigar wrapper and is distinguished from other types of tobacco which serve other purposes such as filler, pipe, chewing, and other kinds of tobacco. Normally, shade-grown tobacco is used only for cigar wrappers. However, if the tobacco is not being processed by the employer for such specific and limited use, the employee is not engaged in exempt processing operations.

§ 780.518 Exempt processing operations.

The processing operations under section 13(a)(14) include, but are not limited to, "drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling" of the shade-grown tobacco. As previously noted, these operations are exempt only if performed on shade-grown tobacco prior to the stemming process to prepare the tobacco for use as cigar wrapper tobacco.

§ 780.519 General scope of exempt operations.

All operations normally performed in the processing of shade-grown tobacco for use as cigar wrapper tobacco, if performed prior to the stemming process and for such use, are included in the exemption. As a whole, this processing substantially changes the physical properties and chemical content of the tobacco, improves its color, increases its combustibility, and eliminates the rawness and harshness of the freshly cured leaf. In the process the leaves are piled in "bulks" of about 4,000 pounds each to undergo a "sweating" or "fermentation" process in which temperature and humidity are carefully controlled. Proper heat control includes, among other things, breaking up the bulk, redistributing the tobacco, and adding water. Proper fermentation or aging requires the bulk to be reconstructed several times. This bulking process may last from 4 to 8 months. When the tobacco is properly dried, cured, fermented, and aged, it is moved