

§ 780.702 What determines application of the exemption.

The application of the section 13(b)(14) exemption depends on the employment of the employee by an establishment of the kind described in the section, and on such employment "within the area of production" as defined by regulation. In any workweek when an employee is employed in country elevator activities by such an establishment within the area of production, the overtime pay requirements of the Act will not apply to him.

§ 780.703 Basic requirements for exemption.

The basic requirements for exemption of country elevator employees under section 13(b)(14) of the Act are as follows:

(a) The employing establishment must:

(1) Be an establishment "commonly recognized as a country elevator," and

(2) Have not more than five employees employed in its operations as such; and

(b) The employee must:

(1) Be "employed by" such establishment, and

(2) Be employed "within the area of production," as defined by the Secretary of Labor.

All the requirements must be met in order for the exemption to apply to an employee in any workweek. The requirements in section 13(b)(14) are "explicit prerequisites to exemption" and the burden of showing that they are satisfied rests upon the employer who asserts that the exemption applies (*Arnold v. Kanowsky*, 361 U.S. 388). In accordance with the general rules stated in § 780.2 of subpart A of this part, this exemption is to be narrowly construed and applied only to those establishments plainly and unmistakably within its terms and spirit. The requirements for its application will be separately discussed below.

ESTABLISHMENT COMMONLY RECOGNIZED
AS A COUNTRY ELEVATOR

§ 780.704 Dependence of exemption on nature of employing establishment.

If an employee is to be exempt under section 13(b)(14), he must be employed

by an "establishment" which is "commonly recognized as a country elevator." If he is employed by such an establishment, the fact that it may be part of a larger enterprise which also engages in activities that are not recognized as those of country elevators (see *Tobin v. Flour Mills*, 185 F. 2d 596) would not make the exemption inapplicable.

§ 780.705 Meaning of "establishment."

The word "establishment" has long been interpreted by the Department of Labor and the courts to mean a distinct physical place of business and not to include all the places of business which may be operated by an organization (*Phillips v. Walling*, 334 U.S. 490; *Mitchell v. Bekins Van and Storage Co.*, 352 U.S. 1027). Thus, in the case of a business organization which operates a number of country elevators (see *Tobin v. Flour Mills*, 185 F. 2d 596), each individual elevator or other place of business would constitute an establishment, within the meaning of the Act. Country elevators are usually one-unit places of business with, in some cases, an adjoining flat warehouse. No problem exists of determining what is the establishment in such cases. However, where separate facilities are used by a country elevator, a determination must be made, based on their proximity to the elevator and their relationship to its operations, on whether the facilities and the elevator are one or more than one establishment. If there are more than one, it must be determined by which establishment the employee is employed and whether that establishment meets the requirements of section 13(b)(14) before the application of the exemption to the employee can be ascertained (compare *Mitchell v. Cammill*, 245 F. 2d 207; *Remington v. Shaw* (W.D. Mich.), 2 WH Cases 262).

§ 780.706 Recognition of character of establishment.

A further requirement for exemption is that the establishment must be "commonly recognized" as a country elevator. The word "commonly" means ordinarily or generally and the term "recognized" means known. An elevator should be generally known by the

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public as a country elevator. This requirement imposes, on the establishment for whose employees exemption is sought, the obligation to demonstrate that it engages in the type of work and has the attributes which will cause the general public to know it as a country elevator. The recognition which the statute requires must be shown to exist if the employer seeks to take the benefit of the exemption (see *Arnold v. Kanowsky*, 361 U.S. 388, 395).

§ 780.707 Establishments “commonly recognized” as country elevators.

In determining whether a particular establishment is one that is “commonly recognized” as a country elevator—and this must be true of the particular establishment if the exemption is to apply—it should be kept in mind that the intent of section 13(b)(14) is to “exempt country elevators that market farm products, mostly grain, for farmers” (107 Cong. Rec. (daily ed.) p. 5883). It is also appropriate to consider the characteristics and functions which the courts and government agencies have recognized as those of “country elevators” and the distinctions which have been recognized between country elevators and other types of establishments. For example, in proceedings to determine industries of a seasonal nature under part 526 of the regulations in this chapter, “country” grain elevators, public terminal and subterminal grain elevators, wheat flour mill elevators, non-elevator-type bulk grain storing establishments, and “flat warehouses” in which grain is stored in sacks, have been recognized as distinct types of establishments engaged in grain storage. (See 24 FR 2584; 3581.) As the legislative history of the exemption cited above makes clear, country elevators handle “mostly grain.” The courts have recognized that the terms “country elevator” and “country grain elevator” are interchangeable (the term “country house” has also been recognized as synonymous), and that there are significant differences between country elevators and other types of establishments engaged in grain storage (see *Tobin v. Flour Mills*, 185 F. 2d 596; *Mitchell v. Sampson Const. Co.* (D. Kan.) 14 WH Cases 269).

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§ 780.708 A country elevator is located near and serves farmers.

Country elevators, as commonly recognized, are typically located along railroads in small towns or rural areas near grain farmers, and have facilities especially designed for receiving bulk grain by wagon or truck from farms, elevating it to storage bins, and direct loading of the grain in its natural state into railroad boxcars. The principal function of such elevators is to provide a point of initial concentration for grain grown in their local area and to handle, store for limited periods, and load out such grain for movement in carload lots by rail from the producing area to its ultimate destination. They also perform a transport function in facilitating the even and orderly movement of grain over the interstate network of railroads from the producing areas to terminal elevators, markets, mills, processors, consumers, and to seaboard ports for export. The country elevator is typically the farmer’s market for his grain or the point at which his grain is delivered to carriers for transportation to market. The elevator may purchase the grain from the farmer or store and handle it for him, and it may also store and handle substantial quantities of grain owned by or pledged to the Government under a price-support program. Country elevators customarily receive, weigh, test, grade, clean, mix, dry, fumigate, store, and load out grain in its natural state, and provide certain incidental services and supplies to farmers in the locality. The foregoing attributes of country elevators have been recognized by the courts. See, for example, *Mitchell v. Sampson Const. Co.* (D. Kan.) 14 WH Cases 269; *Tobin v. Flour Mills*, 185 F. 2d 596; *Holt v. Barnesville Elevator Co.*, 145 F. 2d 250; *Remington v. Shaw* (W.D. Mich.), 2 WH Cases 262.

§ 780.709 Size and equipment of a country elevator.

Typically, the establishments commonly recognized as country elevators are small. Most of the establishments intended to come within the exemption have only one or two employees (107 Cong. Rec. (daily ed.) p. 5883), although some country elevators have a larger number. (See *Holt v. Barnesville Elevator*