

§ 780.707

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).

29 CFR Ch. V (7–1–06 Edition)

§ 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*