

## § 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*

*Co.*, 145 F. 2d 250.) Establishments with more than five employees are not within the exemption. (See § 780.712.) The storage capacity of a country elevator may be as small as 6,000 bushels (see *Tobin v. Flour Mills*, 185 F. 2d 596) and will generally range from 15,000 to 50,000 bushels. As indicated in § 780.708, country elevators are equipped to receive grain in wagons or trucks from farmers and to load it in railroad box-cars. The facilities typically include scales for weighing the farm vehicles loaded with grain, grain bins, cleaning and mixing machinery, driers for prestorage drying of grain and endless conveyor belts or chain scoops to carry grain from the ground to the top of the elevator. The facilities for receiving grain in truckloads or wagonloads from farmers and the limited storage capacity, together with location of the elevator in or near the grain-producing area, serve to distinguish country elevators from terminal or subterminal elevators, to which the exemption is not applicable. The latter are located at terminal or interior market points, receive grain in carload lots, and receive the bulk of their grain from country elevators. Although some may receive grain from farms in the immediate areas, they are not typically equipped to receive grain except by rail. (See *Tobin v. Flour Mills*, supra; *Mitchell v. Sampson Const. Co.* (D. Kan.) 14 WH Cases 269.) It is the facilities of a country elevator for the elevation of bulk grain and the discharge of such grain into rail cars that make it an "elevator" and distinguish it from warehouses that perform similar functions in the flat warehousing, storage, and marketing for farmers of grain in sacks. Such warehouses are not "elevators" and therefore do not come within the section 13(b)(14) exemption.

**§ 780.710 A country elevator may sell products and services to farmers.**

Section 13(b)(14) expressly provides that an establishment commonly recognized as a country elevator, within the meaning of the exemption, includes "such an establishment which sells products and services used in the operation of a farm." This language makes it plain that if the establishment is "such an establishment," that is, if its

functions and attributes are such that it is "commonly recognized as a country elevator" but not otherwise, exemption of its employees under this section will not be lost solely by reason of the fact that it sells products and services used in the operation of a farm. Establishments commonly recognized as country elevators, especially the smaller ones, not only engage in the storing of grain but also conduct various merchandising or "sideline" operations as well. They may distribute feed grains to feeders and other farmers, sell fuels for farm use, sell and treat seeds, and sell other farm supplies such as fertilizers, farm chemicals, mixed concentrates, twine, lumber, and farm hardware supplies and machinery. (See *Tobin v. Flour Mills*, 185 F. 2d 596; *Holt v. Barnesville Elevator Co.*, 145 F. 2d 250). Services performed for farmers by country elevators may include grinding of feeds, cleaning and fumigating seeds, supplying bottled gas, and gasoline station services. As conducted by establishments commonly recognized as country elevators, the selling of goods and services used in the operation of a farm is a minor and incidental secondary activity and not a main business of the elevator (see *Tobin v. Flour Mills*, supra; *Holt v. Barnesville Elevator Co.*, supra).

**§ 780.711 Exemption of mixed business applies only to country elevators.**

The language of section 13(b)(14) permitting application of the exemption to country elevators selling products and services used in the operation of a farm does not extend the exemption to an establishment selling products and services to farmers merely because of the fact that it is also equipped to provide elevator services to its customers. The exemption will not apply if the extent of its business of making sales to farmers is such that the establishment is not commonly known as a "country elevator" or is commonly recognized as an establishment of a different kind. As the legislative history of the exemption indicates, its purpose is limited to exempting country elevators that market farm products, mostly grain, for farmers who are working long work-weeks and need to have the elevator facilities open and available for disposal