sporadically, occasionally, or casually in the course of their duties for other employers are not employed in the operations of the establishment commonly recognized as a country elevator and would not be counted in determining whether the five-employee limitation is exceeded in any workweek. Examples of such employees are employees of a restaurant who bring food and beverages to the elevator employees, and employees of other employers who make deliveries to the establishment.

§ 780.715 Counting employees "employed in the establishment."

(a) Employees employed ''in the establishment,'' if employed ''in such operations'' as previously explained, are to be counted in determining whether the five-employee limitation on the exemption is exceeded.

(b) Employees employed ''in'' the establishment clearly include all employees engaged, other than casually or sporadically, in performing any duties of their employment there, regardless of whether they are direct employees of the country elevator establishment or are employees of a farmer, independent contractor, or other person who are suffered or permitted to work (see Act, section 3(g)) in the establishment. However, tradesmen, such as dealers and their salesmen, for example, are not employed in the elevator simply because they visit the establishment to do business there. Neither are workers who deliver, on behalf of their employers, goods used in the sideline business of the establishment to be considered employed in the elevator.

(c) The use of the language ''employed in'' rather than ''engaged in'' makes it plain also that the employees to be counted include all those employed by the establishment in its operations without regard to whether they are engaged in the establishment or away from it in performing their duties. This has been the consistent interpretation of similar language in other sections of the Act.

EMPLOYEES ''EMPLOYED * * * BY'' THE COUNTRY ELEVATOR ESTABLISHMENT

§ 780.716 Exemption of employees "employed * * * by" the establishment.

If the establishment is a country elevator establishment qualified for exemption as previously explained, and if the ''area of production'' requirement is met (see § 780.720), any employee ''employed * * * by'' such establishment will come within the section 13(b)(14) exemption. This will bring within the exemption employees who are engaged in duties performed away from the establishment as well as those whose duties are performed in the establishment itself, so long as such employees are ''employed * * * by'' the country elevator establishment within the meaning of the Act. The employees employed ''by'' the establishment, who may come within the exemption if the other requirements are met, are not necessarily identical with the employees employed ''in the establishment in such operations'' who must be counted for purposes of the five-employee limitation since some of the latter employees may be employed by another employer. (See §§ 780.712 through 780.715.)

§ 780.717 Determining whether there is employment "by" the establishment.

(a) No single test will determine whether a worker is in fact employed ''by'' a country elevator establishment. This question must be decided on the basis of the total situation (*Rutherford Food Corp.* v. *McComb,* 331 U.S. 722; *U.S.* v. *Silk,* 331 U.S. 704). Clearly, an employee is so employed where he is hired by the elevator, engages in its work, is paid by the elevator and is under its supervision and control.

(b) ''Employed by'' requires that there be an employer-employee relationship between the worker and the employer engaged in operating the elevator. The fact, however, that the employer carries an employee on the payroll of the country elevator establishment which qualifies for exemption does not automatically extend the exemption to that employee. In order to be exempt an employee must actually be ''employed by'' the exempt establishment. This means that whether the