

§ 780.718

29 CFR Ch. V (7-1-06 Edition)

employee is performing his duties inside or outside the establishment, he must be employed in the work of the exempt establishment itself in activities within the scope of its exempt business in order to meet the requirement of actual employment “by” the establishment (see *Walling v. Connecticut Co.*, 154 F. 2d 552).

(c) In the case of employers who operate multiunit enterprises and conduct business operations in more than one establishment (see *Tobin v. Flour Mills*, 185 F. 2d 596; *Remington v. Shaw* (W.D. Mich.) 2 WH Cases 262), there will be employees of the employer who perform central office or central warehousing activities for the enterprise or for more than one establishment, and there may be other employees who spend time in the various establishments of the enterprise performing duties for the enterprise rather than for the particular establishment in which they are working at the time. Such employees are employed by the enterprise and not by any particular establishment of the employer (*Mitchell v. Miller Drugs*, 255 F. 2d 574; *Mitchell v. Kroger Co.*, 248 F. 2d 935). Accordingly, so long as they perform such functions for the enterprise they would not be exempt as employees employed by a country elevator establishment operated as part of such an enterprise, even while stationed in it or placed on its payroll.

§ 780.718 Employees who may be exempt.

Employees employed “by” a country elevator establishment which qualifies for exemption will be exempt, if the “area of production” requirement is met, while they are engaged in any of the customary operations of the establishment which is commonly recognized as a country elevator. Included among such employees are those who are engaged in selling the elevator’s goods or services, keeping its books, receiving, handling, and loading out grain, grinding and mixing feed or treating seed for farmers, performing ordinary maintenance and repair of the premises and equipment or engaging in any other work of the establishment which is commonly recognized as part of its operations as a country elevator.

An employee employed by such an elevator is not restricted to performing his work inside the establishment. He may also engage in his exempt duties away from the elevator. For example, a salesman who visits farmers on their farms to discuss the storage of their grain in the elevator is performing exempt work while on such visits. It is sufficient that an employee employed by an elevator is, while working away from the establishment, doing the exempt work of the elevator. If the establishment is engaged only in activities commonly recognized as those of a country elevator and none of its employees engaged in any other activities, all the employees employed by the country elevator will come within the exemption if no more than five employees are employed in the establishment in such operations and if the “area of production” requirement is met.

§ 780.719 Employees not employed “by” the elevator establishment.

Since the exemption depends on employment “by” an establishment qualified for exemption rather than simply the work of the employee, employees who are not employed by the country elevator are not exempt. This is so even though they work in the establishment and engage in duties which are part of the services which are commonly recognized as those of a country elevator. Since they are not employed by the elevator, employees of independent contractors, farmers and others who work in or for the elevator are not exempt under section 13(b)(14) simply because they work in or for the elevator (see *Walling v. Friend*, 156 F. 2d 429; *Mitchell v. Kroger*, 248 F. 2d 935; *Durkin v. Joyce Agency*, 110 F. Supp. 918, affirmed sub. nom. *Mitchell v. Joyce Agency*, 348 U.S. 945). Thus an employee of an independent contractor who works inside the elevator in drying grain for the elevator is not exempt under this section.

EMPLOYMENT “WITHIN THE AREA OF PRODUCTION”

§ 780.720 “Area of production” requirement of exemption.

(a) In addition to the requirements for exemption previously discussed,