

Wage and Hour Division, Labor

§ 780.711

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