

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, section 13(b)(14) requires that the employee employed by an establishment commonly recognized as a country elevator be "employed within the area of production (as defined by the Secretary)." Regulations defining employment within the "area of production" for purposes of section 13(b)(14) are contained in part 536 of this chapter. All the requirements of the applicable regulations must be met in order for the exemption to apply.

(b) Under the regulations, an employee is considered to be employed within "the area of production" within

the meaning of section 13(b)(14) if the country elevator establishment by which he is employed is located in the "open country or a rural community," as defined in the regulations, and receives 95 percent or more of the agricultural commodities handled through its elevator services from normal rural sources of supply within specified distances from the country elevator. A definition of "area of production" in terms of such criteria has been upheld by the U.S. Supreme Court in *Mitchell v. Budd*, 350 U.S. 473. Reference should be made to part 536 of this chapter for the precise requirements of the definition.

(c) However, it is appropriate to point out here that nothing in the definition places limits on the distance from which commodities come to the elevator for purposes other than the storage of marketing of farm products. The commodities, 95 percent of which are required by definition to come from specified distances, are those agricultural commodities received by the elevator with respect to which it performs the primary concentration, storage, and marketing functions of a country elevator as previously explained (see § 780.708). This is consistent with the emphasis given, in the legislative history, to the country elevator's function of marketing farm products, mostly grain, for farmers (see 107 Cong. Rec. (daily ed.) p. 5883). Commodities brought or shipped to a country elevator establishment not for storage or for market but in connection with its secondary, incidental, or side-line functions of selling products and services used in the operation of a farm (see § 780.610) are not required to be counted in determining whether 95 percent of the agricultural commodities handled come from rural sources of supply within the specified distances.

WORKWEEK APPLICATION OF EXEMPTION

§ 780.721 Employment in the particular workweek as test of exemption.

The period for determining whether the "area of production" requirement of section 13(b)(14) is met is prescribed in the regulations in part 536 of this chapter. Whether or not an establishment is one commonly recognized as a