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elevators ''within the area of production,'' as defined by the Secretary of Labor in part 536 of this chapter.

§ 780.701 Statutory provision.

Section 13(b)(14) of the Fair Labor Standards Act exempts from the overtime provisions of section 7:

> Any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm: *Provided*, That no more than five employees are employed in the establishment in such operations * * *.

§ 780.702 What determines application of the exemption.

The application of the section 13(b)(14) exemption depends on te employment of the employee by an establishment of the kind described in the section, and on such employment ''within the area of production'' as defined by regulation. In any workweek when an employee is employed in country elevator activities by such an establishment within the area of production, the overtime pay requirements of the Act will not apply to him.

§ 780.703 Basic requirements for exemption.

The basic requirements for exemption of country elevator employees under section 13(b)(14) of the Act are as follows:

(a) The employing establishment must:

(1) Be an establishment ''commonly recognized as a country elevator,'' and

(2) Have not more than five employees employed in its operations as such; and

(b) The employee must:

(1) Be ''employed by'' such establishment, and

(2) Be employed ''within the area of production,'' as defined by the Secretary of Labor.

All the requirements must be met in order for the exemption to apply to an employee in any workweek. The requirements in section 13(b)(14) are ''explicit prerequisites to exemption'' and the burden of showing that they are satisfied rests upon the employer who asserts that the exemption applies (*Arnold* v. *Kanowsky*, 361 U.S. 388). In accordance with the general rules stated in §780.2 of subpart A of this part, this exemption is to be narrowly construed and applied only to those establishments plainly and unmistakably within its terms and spirit. The requirements for its application will be separately discussed below.

Establishment Commonly Recognized as a Country Elevator

§ 780.704 Dependence of exemption on nature of employing establishment.

If an employee is to be exempt under section 13(b)(14), he must be employed by an ''establishment'' which is ''commonly recognized as a country elevator.'' If he is employed by such an establishment, the fact that it may be part of a larger enterprise which also engages in activities that are not recognized as those of country elevators (see *Tobin* v. *Flour Mills*, 185 F. 2d 596) would not make the exemption inapplicable.

§ 780.705 Meaning of "establishment."

The word ''establishment'' has long been interpreted by the Department of Labor and the courts to mean a distinct physical place of business and not to include all the places of business which may be operated by an organization (*Phillips* v. *Walling*, 334 U.S. 490; *Mitchell* v. *Bekins Van and Storage Co.*, 352 U.S. 1027). Thus, in the case of a business organization which operates a number of country elevators (see *Tobin* v. *Flour Mills*, 185 F. 2d 596), each individual elevator or other place of business would constitute an establishment, within the meaning of the Act. Country elevators are usually one-unit places of business with, in some cases, an adjoining flat warehouse. No problem exists of determining what is the establishment in such cases. However, where separate facilities are used by a country elevator, a determination must be made, based on their proximity to the elevator and their relationship to its operations, on whether the facilities and the elevator are one or more than one establishment. If there are more than one, it must be determined by which establishment the