
29 C.F.R. § 794.104

Enterprises engaged in described distribution and in other activities.

An enterprise may be engaged in the wholesale or bulk distribution of petroleum products, within the meaning of section 7(b)(3), without being exclusively so engaged. Such engagement may be only one of the several related activities, performed through unified operation or common control for a common business purpose, which constitute the enterprise (see § 794.106) under section 3(r) of the Act. If engaging in such distribution is a regular and significant part of its business, an enterprise which meets the other tests for exception under section 7(b)(3) will be relieved of overtime pay obligations with respect to employment of its employees in such distribution activities, in accordance with the intended scope (see § 794.101) of the exemption. The same will be true with respect to employment of its employees in those related activities which are customarily performed as an incident to or in conjunction with the wholesale or bulk distribution of petroleum products in the enterprises of the industry engaged in such distribution. There is no requirement that engaging in such activities constitute any particular percentage of the enterprises's business. However, in the case of an enterprise engaged in other activities as well as in the wholesale or bulk distribution of petroleum products (including related activities customarily performed in the enterprises of the industry as an incident thereto or in conjunction therewith), an employee employed in such other activities of the enterprise is not engaged in employment which the exemption was intended to reach (see § 794.101). Such an employee is not brought within the exemption by virtue of the fact that the enterprise by which he is employed is engaged with other employees in the distribution activities described in section 7(b)(3). This accords with the judicial construction of other exemptions in the Act which are similarly worded. See *Connecticut Co. v. Walling*, 154 F. 2d 522, Certiorari denied, 329 U.S. 667; *Northwest Airlines v. Jackson*, 185 F. 2d 74; *Davis v. Goodman Lumber Co.*, 133 F. 2d 52; *Fleming v. Swift & Co.*, 41 F. Supp. 825, aff'd 131 F. 2d 249.

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