

29 C.F.R. § 794.115

“Independently owned.”

Ownership of the enterprise may be vested in an individual petroleum jobber, or a partnership, or a corporation, so long as such ownership is not shared by a major oil company, or other producer, refiner, distributor or supplier of petroleum products, so as to affect the independent ownership of the enterprise. As noted in § 794.114, an enterprise will not be considered independently owned where it does not own its own office, bulk storage, and delivery facilities. The enterprise may also not be considered “independently owned” where it does not own its stock-in-trade. (See *Wirtz v. Lunsford*, 404 F.2d 693 (C.A. 6).) It is recognized that, in the ordinary course of business dealings, an independently owned enterprise may purchase its goods on credit and this, of course, will not affect its characterization as being “independently owned” within the meaning of the exemption. However, there may well be a question as to whether the enterprise is “independently owned” where the enterprise receives its petroleum products on consignment and the supplier lays claim to the ownership of the account receivable. Of possible relevance also is the intent evident in the statutory language to provide exemption only for an enterprise which can meet the specified tests which depend on “the sales of such enterprise.” The determination in such cases, as in other cases involving questions of independent ownership, will necessarily depend on all the facts.

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