

Wage and Hour Division, Labor

§ 794.135

considered to come within the 25 percent limitation for purposes of the exemption under section 7(b)(3) if it is made to a “customer who is engaged in the bulk distribution of such products for resale”. The identity of such customers is generally well known in the trade. For example, this would generally include other petroleum jobbers, brokers, wholesalers, and any others who engaged in the bulk distribution of petroleum products for resale. Thus a sale to a petroleum jobber who is engaged in selling petroleum products to gasoline stations would clearly be a sale to a customer described in section 7(b)(3). The essential tests are: first, that the customer must be one who is engaged in the distribution of “such products”, which means petroleum products; second, that he must engage in “the bulk distribution” of such products; and finally, that he must be engaged in such distribution “for resale”. These three requirements are discussed in §§ 794.132 through 794.134.

§ 794.132 “Petroleum products”.

A sale by an enterprise engaged in the wholesale or bulk distribution of petroleum products will be included in the 25 percent limitation under the exemption only if it is made to a customer who engages in the distribution, in bulk and for resale, of “petroleum products”. The term “petroleum products” as used in section 7(b)(3) includes such products as gasoline, kerosene, diesel fuel, lubricating oils, fuel oils, greases, and liquified-petroleum gas. Sales to customers who are not engaged in the distribution of petroleum products will not be included in the 25 percent limitation.

§ 794.133 “Bulk” distribution.

“Bulk” distribution of petroleum products typically connotes those methods of distribution in which large quantities of the product are distributed in a single delivery or delivery trip. Thus, “bulk” distribution includes deliveries from bulk storage facilities at the establishment to the tank truck of a customer (whether or not at “wholesale”). It also includes deliveries made in series on a single trip on a delivery route to the storage tanks or facilities of a number of customers from

a bulk supply of the product transported by tank truck, motor transport, or other motor carrier operated by the enterprise. Such deliveries are to be contrasted with such typical small-quantity individual deliveries as those made into the tank of a motor vehicle for use in its propulsion.

§ 794.134 Distribution “for resale.”

A sale made to a customer engaged in the bulk distribution of petroleum products will be included in the 25 percent limitation only if the customer engages in the bulk distribution of petroleum products “for resale”. Except with respect to a specific exclusion in section 3(n) regarding certain building materials, the word “resale” is not defined in the Act. The common meaning of “resale” is the act of “selling again”. A sale is made for resale when the seller knows or has reasonable cause to believe that what is sold by him will be resold by the purchaser in the same or a different form. Where the sale is thus made for resale, it does not matter what ultimately happens to the subject of the sale. Thus, the fact that goods sold for resale are consumed by fire or no market is found for them and they are therefore never resold does not alter the character of the sale which is made for resale. In considering whether there is a sale of petroleum products for resale in any specific situation, the term “sale” includes, as defined in section 3(k) of the Act, “any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.”

APPLICATION OF EXEMPTION TO EMPLOYEES

§ 794.135 Employees who are exempt.

If an enterprise engaged in distribution of petroleum products satisfies all the conditions specified in section 7(b)(3) as previously discussed, the partial exemption provided by this section from the Act’s general overtime pay requirements will be applicable to all employees employed by their employer in activities of the enterprise for which the exemption was intended if, but