

Wage and Hour Division, Labor

Pt. 794

which the overtime provisions of the Act are applicable, the employee is not exempt under section 13(b)(9) in that workweek. For administrative purposes an employee who spends 20 percent or more of the hours he works in a workweek in such nonexempt work, will not be considered exempt under section 13(b)(9) in that workweek.

PART 794—PARTIAL OVERTIME EXEMPTION FOR EMPLOYEES OF WHOLESALE OR BULK PETROLEUM DISTRIBUTORS UNDER SECTION 7(b)(3) OF THE FAIR LABOR STANDARDS ACT

Subpart A—General

Sec.

- 794.1 General scope of the Act.
- 794.2 Purpose of this part.
- 794.3 Matters discussed in this part.
- 794.4 Significance of official interpretations.
- 794.5 Basic support for interpretations.
- 794.6 Reliance on interpretations.
- 794.7 Interpretations made, continued, and superseded by this part.

Subpart B—Exemption From Overtime Pay Requirements Under Section 7(b)(3) of the Act

SCOPE AND APPLICATION IN GENERAL

- 794.100 The statutory provision.
- 794.101 Intended scope of exemption.
- 794.102 Guides for construing exemptions.
- 794.103 Dependence of exemption on engagement in described distribution.
- 794.104 Enterprises engaged in described distribution and in other activities.
- 794.105 Other requirements for exemption.

THE "ENTERPRISE"

- 794.106 Statutory definition of "enterprise."
- 794.107 "Establishment" distinguished.
- 794.108 Scope of enterprise must be known before exemption tests can be applied.
- 794.109 Statutory basis for inclusion of activities in enterprise.
- 794.110 Activities excluded from the enterprise by the statute.
- 794.111 General characteristics of the statutory enterprise.

"INDEPENDENTLY OWNED AND CONTROLLED LOCAL ENTERPRISE"

- 794.112 Only independent and local enterprises qualify for exemption.
- 794.113 The enterprise must be "local."
- 794.114 The enterprise must be "independently owned and controlled."

- 794.115 "Independently owned."
- 794.116 "Independently * * * controlled."
- 794.117 Effect of franchises and other arrangements.
- 794.118 Effect of unrelated activities.

ANNUAL GROSS VOLUME OF SALES

- 794.119 Dependence of exemption on sales volume of the enterprise.
- 794.120 Meaning of "annual gross volume of sales."
- 794.121 Exclusion of excise taxes.
- 794.122 Ascertainment of "annual" gross sales volume.
- 794.123 Method of computing annual volume of sales.
- 794.124 Computations on a fiscal year basis.
- 794.125 Grace period of 1 month for compliance.
- 794.126 Computations for a new business.

SALES MADE WITHIN THE STATE

- 794.127 Exemption conditioned on making 75 percent of sales within the State.
- 794.128 Sales made to out-of-State customers.
- 794.129 Sales "made within the State" not limited to noncovered activity.

SALES MADE TO OTHER BULK DISTRIBUTORS

- 794.130 Not more than 25 percent of sales may be to customers engaged in bulk distribution of petroleum products for resale.
- 794.131 "Customer * * * engaged in bulk distribution."
- 794.132 "Petroleum products."
- 794.133 "Bulk" distribution.
- 794.134 Distribution "for resale."

APPLICATION OF EXEMPTION TO EMPLOYEES

- 794.135 Employees who are exempt.
- 794.136 Employees whose activities may qualify them for exemption.
- 794.137 Effect of activities other than "wholesale or bulk distribution of petroleum products."
- 794.138 Workweek unit in applying the exemption.
- 794.139 Exempt and nonexempt activities in the workweek.
- 794.140 Compensation requirements for a workweek under section 7(b)(3).
- 794.141 Workweeks when hours worked do not exceed 12 in any day or 56 in the week; compensation requirements.
- 794.142 Special compensation when overtime in excess of 12 daily or 56 weekly hours is worked in the workweek.
- 794.143 Work exempt under another section of the Act.

RECORDS TO BE KEPT BY EMPLOYERS

- 794.144 Records to be maintained.

§ 794.1

AUTHORITY: Secs. 1-19, 52 Stat. 1060, as amended; 29 U.S.C. 201-219.

SOURCE: 35 FR 16510, Oct. 22, 1970, unless otherwise noted.

Subpart A—General

§ 794.1 General scope of the Act.

The Fair Labor Standards Act, as amended, hereinafter referred to as the Act, is a Federal statute of general application which establishes minimum wage, overtime pay, equal pay and child labor requirements that apply as provided in the Act. All employees whose employment has the relationship to interstate or foreign commerce which the Act specifies are subject to the prescribed labor standards unless specifically exempted from them. Employers having such employees are required to comply with the Act's provisions in this regard unless relieved therefrom by some exemption in the Act. Such employers are also required to comply with specified recordkeeping requirements contained in part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

§ 794.2 Purpose of this part.

This part 794 constitutes the official interpretation of the Department of Labor with respect to the meaning and application of section 7(b)(3) of the Act. This section provides a limited partial exemption from the overtime provisions of section 7 of the Act (but not from the minimum wage, child labor, equal pay, or recordkeeping provisions) with respect to employees of an independently owned and controlled local enterprise engaged in the wholesale or bulk distribution of petroleum products, if the enterprise meets certain specified conditions. This exemption was added to the Act by the 1966 Amendments, which repealed a complete overtime exemption previously available for employees of such enterprises (section 13(b)(10) of the Act as amended in 1961). It is the purpose of this part to make available in one

29 CFR Ch. V (7-1-06 Edition)

place the interpretations of the law governing this exemption which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act.

§ 794.3 Matters discussed in this part.

This part primarily discusses the meaning and application of the section 7(b)(3) exemption. The meaning and application of other provisions of the Fair Labor Standards Act are discussed only to make clear their relevance to the 7(b)(3) exemption and are not considered in detail in this part. Interpretations published elsewhere in this title deal with such subjects as the general coverage of the Act (part 776 of this chapter), methods of payment of wages (part 531, subpart C, of this chapter), computation and payment of overtime compensation (part 778 of this chapter), computation and payment of overtime compensation (part 778 of this chapter), retailing of goods or services (part 779 of this chapter), hours worked (part 785 of this chapter), and child labor provisions (part 570 of this chapter). Regulations on recordkeeping are contained in part 516 of this chapter, and regulations defining exempt bona fide executive, administrative, and professional employees are contained in part 541 of this chapter. The equal pay provisions are discussed in part 800 of this chapter. Regulations and interpretations on other subjects concerned with the application of the Act are listed in the table of contents to this chapter. Copies of any of these documents may be obtained from any office of the Wage and Hour Division.

§ 794.4 Significance of official interpretations.

The interpretations of the law contained in this part are official interpretations of the Department of Labor with respect to the application under described circumstances of the provisions of law which they discuss. These interpretations indicate the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon