

the enterprise which employs him meets all of the following requirements: (a) It is a "local" enterprise; (b) it is "independently owned and controlled"; (c) it has an annual gross volume of sales of less than \$1 million exclusive of excise taxes; (d) it makes more than 75 percent of its annual dollar volume of sales within the State in which it is located; and (e) not more than 25 percent of such annual dollar volume of sales is to customers who are engaged in the bulk distribution of petroleum products for resale. In order to determine whether all these requirements are met, it is necessary to know what constitutes the "enterprise" to which reference is made, the meaning of "the wholesale or bulk distribution of petroleum products" in which engagement is required as a prerequisite to exemption, what is meant by a "local" enterprise and what characterizes it as "independently owned and controlled", and the criteria for application of the dollar volume tests. These matters will be discussed in some detail in the sections following.

THE "ENTERPRISE"

§794.106 Statutory definition of "enterprise."

The term "enterprise" is defined in section 3(r) of the Act. That definition (insofar as it affects a wholesale or bulk petroleum distributor) is as follows:

"Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor: *Provided*, That within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement (1) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (2) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3)

that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

§794.107 "Establishment" distinguished.

The "enterprise" referred to in the section 7(b)(3) exemption is to be distinguished from an "establishment". As used in the Act, the term "establishment", which is not specially defined therein, refers to a "distinct physical place of business" rather than to "an entire business or enterprise" which may include several separate places of business. (See *Phillips v. Walling*, 324 U.S. 490; *Mitchell v. Bekins Van & Storage Co.*, 352 U.S. 1027; 95 Congressional Record 12505, 12579, 14877; H. Rept. No. 1453, 81st Cong., first session, p. 25.) It will be noted from the definition of "enterprise" in section 3(r), as set forth in §794.106, that the activities of the enterprise may be "performed in one or more establishments," and section 7(b)(3) specifies that the enterprises to which its exemption requirements are applicable will include "an enterprise with more than one bulk storage establishment."

§794.108 Scope of enterprise must be known before exemption tests can be applied.

The scope of the "enterprise" as defined by section 3(r) of the Act must be ascertained before it is possible to apply the tests for exemption contained in section 7(b)(3) which are based on the dollar volume of sales of the "enterprise". The activities included in the enterprise must be known, and any activities not a part of the enterprise must be excluded before the dollar volume of sales derived from the activities of the enterprise can be computed.

§794.109 Statutory basis for inclusion of activities in enterprise.

The "enterprise" for purposes of enterprise coverage under section 3(s) and the exemption provision in section 7(b)(3), is defined in section 3(r) (§794.106) in terms of the activities in which it is engaged. All the "related