

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Wage and Hour Division  
WASHINGTON, D.C. 20210



DEC 9 1976

This is in reply to questions raised during recent meetings with members of my staff, and in your letter, as to the circumstances under which a food service facility in a truck stop may be regarded as a separate establishment under the Fair Labor Standards Act. This letter will clarify the position previously set out in our letter of December 7, 1972.

The general requirements for determining whether there are two separate establishments on the same premises appear in section 779.305 of 29 CFR Part 779. As outlined in this section, the food service portion of a truck stop would be regarded as a separate establishment from the rest of the truck stop if (1) it is physically separated from the other activities of the truck stop; (2) it is functionally operated as a separate unit, having separate books and records reflecting separate accounting of its revenues and expenses; and (3) there is no interchange of employees with the other units of the truck stop.

In determining whether the food service operations are functionally separated (item 2 above), we have stated in our enforcement position and in our correspondence with you that one key requirement is that the amount of food business derived from sales to the general consuming public, as opposed to truckers, must be substantial. We have also stated that this particular requirement is clearly met if more than 50 percent of the annual dollar volume of food sales of the food service facility is derived from sales to the general consuming public.

However, since it has been shown that this percentage test is impractical to apply in the ordinary case, we have discontinued its use. In this regard, the food service facility must operate

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as a separate restaurant which encourages the patronage of the general public (not just truckers) in order to be considered functionally separate. This requirement will be met where the truck stop's advertising makes clear that it has a separate restaurant which welcomes the general public; actively encourages public patronage by newspaper ads, highway signs and similar means, such as providing lunches for business clubs, featured menus for families, special days, children's portions and the like; and, in the ordinary case, the food sales rise substantially in the summer vacation months or other periods when families are on the road.

The requirement of no interchange of employees (item 3 above) has been further clarified. This requirement has reference to the indiscriminate use of employees in both units (i.e., employees who physically work in both units). This requirement is met where the interchange is only occasional as stated in section 779.305 of Part 779. Thus, employees of a separate restaurant establishment who irregularly perform an insignificant amount of incidental work for the other unit will meet this requirement. On the other hand, for example, the no interchange test would not be met where a cashier regularly works in the food service facility at meal times and in other portions of the truck stop at other times. However, where a bookkeeper is located in one unit, but works on the payroll records of both the food service facility and the other portions of the truck stop, this activity would not in itself defeat the requirement that there be no interchange of employees.

Where a food service facility in a truck stop is a separate restaurant establishment under the standards listed above, employees of the restaurant who also perform work for the nonexempt establishment during the same workweek are not "employed by" a restaurant during such workweek (section 779.311(a)). Thus, a bookkeeper who maintains records for both units is not within the restaurant exemption. On the other hand, employees of a separate restaurant establishment who perform an insignificant amount of incidental work irregularly for the nonexempt unit are within the exemption.

We trust that the above information will enable the Association and its members to resolve their problem regarding the applicability of the restaurant establishment exemption to a food service facility operated as a part of a truck stop.

Sincerely,

Ronald J. James  
Administrator

by Warren D. Landis  
Deputy Administrator  
Wage and Hour Division