

## FLSA-889

November 6, 1979

This is in reply to your letter of October 4, 1979, with which you enclosed a copy of a letter from \*\*\* concerning a possible exclusion from the minimum wage standards of the law of the State of Wisconsin for bulk fuel oil distributorships.

We have considered your constituent's comments under the provisions of the Fair Labor Standards Act, the Federal law of most general application concerning wage and hours of work. The highlights of this law concerning bulk fuel oil establishments are contained in the enclosed WH Publication 1329.

This law requires that all covered and nonexempt employees of a bulk fuel oil distributorship be paid at least a minimum wage of \$2.90 an hour for all hours worked and overtime pay of one and one-half the regular rate of pay for all hours worked over 40 in the workweek. However, section 7(b)(3) of the Act provides a partial overtime pay exemption for any employee of an independently owned and controlled local enterprise engaged in the wholesale or bulk distribution of petroleum products if the standards set forth on page 10 of the enclosed bulletin are met.

Mr. \*\*\* may be interested in knowing that when Congress amended the Fair Labor Standards Act in 1961, a complete overtime pay exemption was provided for in section 13(b)(10). This section stated:

(10) any employee of an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if (A) the annual gross volume of sales of such enterprise is not more than \$1,000,000 exclusive of excess taxes, and (B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and (C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale's; or.....

When the Act was amended in 1966, this complete exemption was made a partial overtime exemption in section 7(b)(3) which provided:

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if---

(A) the annual gross volume of sales of such enterprise is less than \$1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the state in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to bulk distribution of such products for resale, and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 6, and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

The 1974 and the 1977 amendments to the Act retained this partial overtime exemption. In addition, you may wish to point out to \*\*\* that there has never been a specific exemption from the minimum wage provisions of the of the Act for employees of a bulk fuel oil distributorship.

With regard to your constituent's questions concerning the minimum wage law of the State of Wisconsin, you may wish to suggest that he contact the Department of Industry, Labor and Human Relations for the State of Wisconsin at 201 East Washington Avenue, Post Office Box 3209, Madison, Wisconsin 53701 (telephone: (608) 266-3131) for further assistance. We regret that we do not have the information necessary to respond to \*\*\* questions concerning a State law.

Sincerely,

Nik B. Edes  
Deputy Under Secretary  
for Legislation and  
Intergovernmental Relations

Enclosure