modified, amended, rescinded or deter-
determined by judicial authority to be in-
correct, they may be relied upon as
provided in section 10 of the Portal-to-
Portal Act of 1947 (63 Stat. 910, 29
U.S.C. 251 et seq., discussed in part 790
of this chapter). In addition, the Su-
preme Court has recognized that such
interpretations of this Act “provide a
practical guide to employers and em-
ployees as to how the office rep-
resenting the public interest in its en-
forcement will seek to apply it” and
“constitute a body of experience and
informed judgment to which courts and
litigants may properly resort for guid-
ance.” Further, as stated by the Court:
“Good administration of the Act and
good judicial administration alike re-
quire that the standards of public en-
forcement and those for determining
private rights shall be at variance only
where justified by very good reasons.”
(Skidmore v. Swift, 323 U.S. 134).

§ 794.7 Interpretations made, contin-
ued, and superseded by this part.

On and after publication of this part
in the FEDERAL REGISTER, the interpre-
tations contained therein shall be in ef-
fact and shall remain in effect until
they are modified, rescinded, or with-
drawn. Prior opinions, rulings, and in-
terpretations and prior enforcement
policies which are not inconsistent
with the interpretations in this part or
with the Fair Labor Standards Act as
amended by the Fair Labor Standards
Amendment of 1966 and which were in
effect at the time of such publication
are continued in effect; all other opin-
ions, rulings, interpretations, and en-
forcement policies on the subjects dis-
cussed in the interpretations in this
part are rescinded and withdrawn.

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

§ 794.100 The statutory provision.

Section 7(b)(3) of the Act provides a
partial exemption from the overtime
pay requirements of section 7 (but not
from the minimum wage, equal pay or
child labor requirements) for any em-
ployee employed by an independently owned and controlled
local enterprise (including an enterprise
with more than one bulk storage establish-
ment) engaged in the wholesale or bulk dis-
tribution of petroleum products if:

(A) The annual gross volume of sales of
such enterprise is less than $1 million exclu-
sive of excise taxes;

(B) More than 75 per centum of such enter-
prise’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 an-
nual dollar volume of sales of such enterprise
is to customers who are engaged in the bulk
distribution of such products for resale, and
such employee receives compensation for
employment in excess of 40 hours in any
workweek at a rate not less than one and
one-half times the minimum wage applicable
to him under section 6, and if such employee
receives compensation for employment in ex-
cess of 12 hours in any workday, or for em-
ployment in excess of 56 hours in any work-
week, as the case may be, at a rate not less
than one and one-half times the regular rate
at which he is employed.

§ 794.101 Intended scope of exemption.

Under section 7(b)(3) of the Act, the
intent of the exemption must be given
effect in determining the scope of its
application to an enterprise and to the
employees of an enterprise. The statu-
tory language must be applied to the
facts in a manner consistent with the
purpose of the exemption as evidenced
by its legislative history. This purpose
is to relieve the described enterprises
from the application of the Act’s gen-
eral overtime pay requirements (in the
limited manner specified in the exemp-
tion) to employment in their activities
of distributing petroleum products.
Such employment was stated to be af-
fected by climatic, seasonal, and other
pertinent factors characteristic of busi-
ness operations in the distribution of
such products. (See, in this connection,
the following documents of 87th Cong.,
first sess.; H. Rept. No. 75, pp. 26, 27, 36;
105 Congressional Record (daily edi-
tion) p. 4519; S. Rept. No. 145, pp. 37, 50;
H. Rept. No. 327, p. 18; Hearings before
Senate Subcommittee on Labor on S.
256, S. 879, and S. 895, at pp. 411–424;
Hearings before House Special Sub-
committee on Labor on H.R. 2935, at
pp. 422–425 and 627–629; and these docu-
ments of the 89th Cong., second sess.;
H. Rept. No. 1366, pp. 12, 13, and 43;
§ 794.102 Guides for construing exemptions.

It is judicially settled that “The details with which the exemptions in this Act have been made preclude their enlargement by implication” and “no matter how broad the exemption, it is meant to apply only to” the employment specified in the statute. Conditions specified in the language of the Act are “explicit prerequisites to exemption.” Accordingly, it is the well-established rule that exemptions from the Act “are to be narrowly construed against the employer seeking to assert them” and their applications is limited to those who come “plainly and unmistakably within their terms and spirit.” An employer who claims such an exemption has the burden of showing that it applies. See Wirtz v. Lunsford, 404 F. 2d 693 (C.A. 6); Addison v. Holly Hill, 322 U.S. 607; Maneja v. Waialua, 349 U.S. 254; Phillips v. Walling, 334 U.S. 490; Arnold v. Kanowsky, 361 U.S. 388; Mitchell v. Kentucky Finance Co., 359 U.S. 290; Walling v. General Industries Co., 330 U.S. 545.

§ 794.103 Dependence of exemption on engagement in described distribution.

By its terms, section 7(b)(3) provides a partial and contingent exemption from the general overtime pay requirements of the Act applicable to “any employee * * * engaged in the wholesale or bulk distribution of petroleum products” if the duties of his employment require him to perform any operations or provide any services in carrying on such activities of his employer, and if the employee is not engaged in a substantial portion of his workweek in other activities which do not provide a basis for exemption under section 7(b)(3). Such an interpretation of the quoted language is believed necessary to give effect to the intended scope of the exemption as explained in §794.101. Where an enterprise is exclusively engaged in the wholesale or bulk distribution of petroleum products and meets all the other requirements of section 7(b)(3), all of its employees who are paid for their hours of work in accordance with section 6 of the Act and the special pay provisions of section 7(b)(3) (see §778.602 of this chapter and §§794.135 through 794.136) will be exempt from the overtime pay requirements of the Act under the principles stated above. What products are included in the term “petroleum products” and what constitutes the “bulk distribution” of such products within the meaning of section 7(b)(3) are discussed in §§794.132 through 794.133.

§ 794.104 Enterprises engaged in described distribution and in other activities.

An enterprise may be engaged in the wholesale or bulk distribution of petroleum products, within the meaning of section 7(b)(3), without being exclusively so engaged. Such engagement may be only one of the several related activities, performed through unified operation or common control for a common business purpose, which constitute the enterprise (see §794.106) under section 3(r) of the Act. If engaging in such distribution is a regular and significant part of its business, an enterprise which meets the other tests for exception under section 7(b)(3) will be relieved of overtime pay obligations with respect to employment of its employees in such distribution activities, in accordance with the intended scope (see §794.101) of the exemption. The