

Cong. Record (daily edition) p. 10745; S. Rept. No. 1487, pp. 32 and 51.)

§ 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 * * * employed * * * by an * * * enterprise * * * engaged in the wholesale or bulk distribution of petroleum product * * *." Thus, engagement in the described distribution is an "explicit prerequisite to exemption" (*Arnold v. Kanowsky*, 361 U.S. 388), as are the other express conditions set forth in the section. A natural reading of the statutory language suggests that the employee as well as the enterprise must be so engaged in order for the exemption to apply (see *Porto Rico Light Co. v. Mor*, 253 U.S. 345). To the extent that its employees are engaged in the described distribution, the enterprise is itself so engaged (see *Kirshbaum v. Walling*, 316 U.S. 517; and see § 794.104). Also, whenever an enterprise is so engaged, any of its employees will be con-

sidered to be "employed by an * * * enterprise * * * 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