§ 794.130 Not more than 25 percent of sales may be to customers engaged in bulk distribution of petroleum products for resale.

As a further requirement for exemption, section 7(b)(3) limits to not more than 25 percent (measured by annual dollar volume) the sales which an enterprise engaged in the wholesale or bulk distribution of petroleum products may make to customers who are engaged in the bulk distribution of such products for resale. It should be noted that this limitation does not depend on whether the goods sold by the enterprise to such customers are sold by it for resale, or on whether the goods sold to such customers are petroleum products. It is whether the customer is engaged in selling petroleum products for resale that is controlling. A sale to a customer of an enterprise engaged in the wholesale or bulk distribution of petroleum products will be considered to come within the 25 percent limitation for purposes of the exemption under section 7(b)(3) if it is made to a “customer who is engaged in the bulk distribution of such products for resale”. The identity of such customers is generally well known in the trade. For example, this would generally include other petroleum jobbers, brokers, wholesalers, and any others who engaged in the bulk distribution of petroleum products for resale. Thus a sale to a petroleum jobber who is engaged in selling petroleum products to gasoline stations would clearly be a sale to a customer described in section 7(b)(3). The essential tests are: first, that the customer must be one who is engaged in the distribution of “such products”, which means petroleum products; second, that he must engage in “the bulk distribution” of such products; and finally, that he must be engaged in such distribution “for resale”. These three requirements are discussed in §§ 794.132 through 794.134.

§ 794.131 “Petroleum products”.

A sale by an enterprise engaged in the wholesale or bulk distribution of petroleum products will be included in the 25 percent limitation under the exemption only if it is made to a customer who engages in the distribution, in bulk and for resale, of “petroleum products”. The term “petroleum products” as used in section 7(b)(3) includes such products as gasoline, kerosene, diesel fuel, lubricating oils, fuel oils, greases, and liquified-petroleum gas. Sales to customers who are not engaged in the distribution of petroleum products will not be included in the 25 percent limitation.

§ 794.132 “Bulk” distribution.

“Bulk” distribution of petroleum products typically connotes those methods of distribution in which large quantities of the product are distributed in a single delivery or delivery trip. Thus, “bulk” distribution includes deliveries from bulk storage facilities at the establishment to the tank truck of a customer (whether or not at “wholesale”). It also includes deliveries made in series on a single trip on a delivery route to the storage