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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 opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn.

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

SCOPE AND APPLICATION IN GENERAL

§ 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 employee employed

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 million 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 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 excess of 12 hours in any workday, or for employment in excess of 56 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.

§ 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 statutory 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 general overtime pay requirements (in the limited manner specified in the exemption) to employment in their activities of distributing petroleum products. Such employment was stated to be affected by climatic, seasonal, and other pertinent factors characteristic of business 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 edition) 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 Subcommittee on Labor on H.R. 2935, at pp. 422–425 and 627–629; and these documents of the 89th Cong., second sess.; H. Rept. No. 1366, pp. 12, 13, and 43; 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 prerequisities 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.