

U. S. DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington

"AREA OF PRODUCTION" REDEFINED IN BEAN CASE

"Area of Production" as defined by Administrator Elmer F. Andrews, of the Wage and Hour Division, was amended today following a hearing held at the request of operators of bean elevators in Michigan and other states who protested that the definition originally made by the Administrator imposed an undue hardship upon them. As redefined, "Area of Production" in the case of dry edible beans now exempts from the Fair Labor Standards Act employees engaged in hand-picking beans in country bean elevators but will not exempt employees in terminal elevators. As originally issued, the definition of "Area of Production" affected only establishments on farms or in the immediate locality employing not more than 7 employees and thus excluded from the exemption practically all bean elevators.

At the time of the original definition Administrator Andrews announced procedure under which groups feeling that they were aggrieved by his decision could apply for and obtain a review and redefinition. It was under this procedure that employers engaged in grading, sorting and storing beans in the Michigan, New York and other bean producing regions applied for modification of this regulation. The hearing was conducted before Mr. C. C. Alpern of the Legal Branch of the Wage and Hour Division.

In announcing the new definition, Mr. Andrews issued a statement in which he explained that "the present general exemption does not exempt all the employers believed by some to be entitled to it". He added that, in his opinion,

"the burden of abiding by the Wage and Hour provisions of the Act would, in most instances, be less injurious than the disturbances in the competitive relationships of employers similarly situated that would result from a broader general definition."

"The cooperation of both Labor and Agriculture in the formulation of amendments for recommendation to the Congress to clarify the agricultural exemptions in the Act will be welcome," Mr. Andrews said.

A hearing was held by the Wage and Hour Division on November 14, 1938, to consider an application for amendment of the regulations as applied to dried beans.

"The facts obtained at this hearing indicated that the existing regulation, as it affected this commodity was too restrictive, in that it excluded from the exemption plants of the type which the original definition was designed to exempt", the Administrator continued. "They further indicated that the definition could be changed as provided without seriously affecting the economic position of competing employers."

Mr. Andrews' statement was:

"Sections 7(c) and 13 (a)(10) of the Fair Labor Standards Act require the Administrator to define 'area of production' for the purposes of making certain wage and hour exemptions operative.

"The legislative history of these provisions indicates that Congress intended to exempt from the hour, or from both the wage and hour requirements of the Act, certain operations in connection with the movement and preparation of agricultural commodities for market which are performed near the farm.

"It is clear from the language of the Act that the operations described in Sections 7(c) and 13(a)(10) were not to be exempt as such, but only when they are performed in the 'area of production.' The Administrator was given the duty and power to determine when such operations were within the area of production and when they were without.

"In exercising this power, the Administrator sought to draw the line so as to cause as little disturbance in the competitive positions of employers similarly situated as possible, pending opportunity for more thorough investigation. Hence, the exemption was confined to operations performed on the farm in connection with products grown on the farm or in establishments employing not more than seven workers handling commodities grown in the vicinity. Investigations made with the limited funds and personnel available in the short period before the effective date of the Act indicated that, as applied to agricultural commodities and processes generally, the definition issued would cause less serious economic dislocation than any other, except possibly a definition which would exempt the operations in question wherever performed. The blanket exemption would obviously have been contrary to the statute and the intent of Congress. Where blanket exemptions were intended, they were unequivocally provided for in the Act.

"The facts obtained at this hearing indicated that the existing regulation, as it affected this commodity was too restrictive, in that it excluded from the exemption plants of the type which the original definition was designed to exempt. They further indicated that the definition could be changed as provided without seriously affecting the economic position of competing employers.

"While the present exemption does not exempt all the employers believed by some to be entitled to it, the Administrator feels that the burden of abiding by the wage and hour provisions of the Act would, in most instances, be less injurious than the disturbances in the competitive relationships of employers similarly situated that would result from a broader definition. The Administrator does not feel that, in the absence of an express mandate from Congress, the issuance of a broader general definition would be justified in view of the serious consequences that would attend such a definition as to many industries.

"The suggestion has been made that areas of production should have been mapped for each of the several agricultural and horticultural commodities. This procedure would have involved the mapping of producing regions and locations of processing establishments for more than 100 individual commodities, as to many of which area lines cannot be practically drawn. Not only would such a procedure lead to discrimination against plants on the borderlines of areas, but its feasibility is questionable in view of the time and great cost required for carrying it out.

"Amendments designed to remove some of the problems raised by the agriculture exemptions in the Act may be proposed at the next session of Congress. The cooperation of both labor

and agriculture in the formulation of amendments for recommendation to the Congress will be welcomed.

"An amendment to the definition of 'area of production' applicable to dry edible beans is being issued. The revised definition will exempt from the operation of the Act employees engaged in the handpicking of beans in country bean elevators or warehouses but will not affect terminal elevators. The revised definition is designed to serve temporarily, pending further investigation or action by Congress."