

NOTICE OF DETERMINATION BY ADMINISTRATOR ON PETITION BY CIGAR MANUFACTURERS' ASSOCIATION OF AMERICA, INC., AND SUNDRY OTHER PARTIES FOR AMENDMENT (IN RESPECT TO PUERTO RICO CIGAR LEAF TOBACCO) OF SECTION 536.2 OF REGULATIONS, PART 536, DEFINING "AREA OF PRODUCTION" (AS USED IN SECTION 13 (a)(10) OF THE FAIR LABOR STANDARDS ACT).

WHEREAS pursuant to Section 536.3 as amended of Regulations, Part 536 - (regulations defining the term "area of production" as used in Section 7 (c) and in Section 13 (a)(10) of the Fair Labor Standards Act), petitions were filed with the Administrator by Cigar Manufacturers' Association of America, Inc., and sundry other parties to amend Section 536.2 as amended, of said regulations; and

WHEREAS pursuant to notice a hearing on such petitions was held on December 9 and 10, 1938, in Washington, D. C. on the following question:

"What, if any, amendment should be made of Section 536.2 of the regulations issued under the Fair Labor Standards Act of 1938 in respect to employees employed in packing establishments located in the area in which Puerto Rican tobacco is grown and engaged in handling, receiving, bulking, sorting, stripping, grading, and packing, or any other services in connection with preparing for market, cigar leaf tobacco grown on the Island of Puerto Rico."

and

WHEREAS it appeared in the course of such hearing that employees in such establishments are engaged in a continuous series of operations of which the end product is cured stripped tobacco and that such tobacco as prepared is not tobacco in its raw or natural state, and therefore that such employees are not engaged in preparing tobacco in its raw or natural state for market, within the meaning of Section 13 (a)(10) of the Fair Labor Standards Act; but

WHEREAS it appears that among the above mentioned operations occurring in the preparation of Puerto Rican tobacco for market are certain operations specified in Section 13 (a)(10) of the said Act, namely, handling, packing, storing, and drying, and thereby entitled to the exemption therein set forth, and

WHEREAS it appears that it would be impracticable to separate from the operations specified in Section 13 (a)(10) the other operations which are a part of the continuous process above mentioned, and, therefore, that handling, packing, storing, and drying must be construed as embracing the above mentioned continuous series of operations, and

WHEREAS it appears that some of the establishments for which application is made are operated by tobacco manufacturers who prepare the tobacco for their own use and not for market, but

WHEREAS it appears that the majority of the establishments for which application is made prepare the tobacco for market, and

WHEREAS it appears that the typical establishment wherein said operations are performed is located within the producing area or so near to the farms where such tobacco is grown as to cause the majority of said establishments to be the first practical concentration points for the performance of said operations,

NOW THEREFORE, in view of the foregoing, Section 536.2, as amended of the said regulations is hereby amended by adding thereto an alternative paragraph numbered (d) so as to read as follows:

SECTION 536.2 "AREA OF PRODUCTION" AS USED IN SECTION 13 (a)(10) OF THE FAIR LABOR STANDARDS ACT. An individual shall be regarded as employed in the "area of production" within the meaning of Section 13(a)(10), in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products.

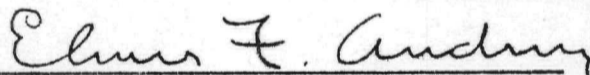
(a) if he is engaged in such work on a farm and on agricultural or horticultural commodities produced exclusively on such farm, or

(b) if the agricultural or horticultural commodities are obtained by the establishment where he is employed from farms in the immediate locality and the number of employees in such establishment does not exceed seven, or

(c) with respect to dry edible beans, if he is so engaged in an establishment which is a first concentration point for the processing of such beans into standard commercial grades for marketing in their raw or natural state. As used in this subsection (c), "first concentration point" means a place where such beans are first assembled from nearby farms for such processing but shall not include any establishment normally receiving a portion of the beans assembled from other first concentration points, or

(d) with respect to Puerto Rican leaf tobacco, if he is engaged in handling, packing, storing, and drying such tobacco for market in an establishment which is a first concentration point for such tobacco. As used in this subsection (d), "first concentration point" means a place where such tobacco is first assembled from nearby farms for such preparation for market but shall not include any establishment normally receiving a portion of the tobacco assembled from other concentration points, nor any establishment operated by a manufacturer for the preparation of tobacco for his own use in manufacturing.

Signed at Washington, D. C., this 23rd day of February, 1939.



Elmer F. Andrews, Administrator
Wage and Hour Division
Department of Labor

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