

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

LIVESTOCK PRODUCERS' FEARS GROUNDLESS, ANDREWS ADVISES

Livestock associations were advised in a letter made public by Administrator Elmer F. Andrews of the Wage and Hour Division, U. S. Department of Labor, today that the employment of workers under the provisions of the Fair Labor Standards Act in certain operations performed in meat packing plants, should not adversely affect the income of livestock producers.

The letter was written in response to protests made by state livestock associations and individual producers following the recent publication of an interpretative bulletin on the exemptions from the Fair Labor Standards Act applicable to the meat packing industry. This interpretative bulletin was prepared by George A. McNulty, General Counsel for the Wage and Hour Division, for the guidance of employers and employees engaged in agriculture or in the processing of agricultural commodities and was the fourteenth of a series issued to indicate the line that is being followed by the Administrator in his official duties.

"The meat packing industry is one of the industries which enjoy an extremely low percentage of labor cost," Mr. Andrews pointed out in his letter. "In the year 1937 only six per cent of the value of the product of the meat packing industry was attributable to wages as compared to approximately eight per cent in the food processing industries generally, and approximately 16.5 per cent in manufacturing. The negligible amount of overtime payments that might be required under our interpretation of the exemption would be far less than one-tenth of one per cent of the value of the product. The amount would be so small that no difference could possibly be felt either by the livestock producers or by the consuming public."

Mr. Andrews also pointed out that "if it should ever develop that any substantial amount of overtime is necessitated, the industry may avail itself of the provisions for flexibility in hours provided in Section 7 (b) (1) and 7 (b) (2)." The sections referred to deal with arrangements permitting work up to 12 hours per day and 56 hours per week without overtime payments under certain types of collective bargaining contracts with bona fide unions.

The letter sent to the livestock associations follows:

"Reference is made to your telegram of recent date relating to Interpretative Bulletin No. 14 insofar as it applies to the handling and processing of livestock and livestock products.

"We have received a number of telegrams from producers of livestock which indicate that there is considerable misconception both as to the purpose and scope of Interpretative Bulletin No. 14, a copy of which is enclosed. That Bulletin, like the others issued by the Division, was prepared for the purpose of guiding employers and employees in applying the law. The statute does not confer upon the Administrator any general power to issue rulings including employees within the coverage of the Act or excluding them, and no attempt was made in Bulletin No. 14 to restrict any exemption which the Congress had granted for the livestock and meat-packing industry. The Wage and Hour Division simply sought to make available to employers and employees the results of the research of its legal staff.

"Bulletin No. 14 deals with the exemption for agriculture and with the various exemptions relating to the processing of agricultural commodities. Paragraph 21 discusses the 14 workweek hours exemption provided in Section 7 (c) of the Act for the employees of an employer engaged in the handling, slaughtering or dressing of livestock. The Bulletin states that employees

engaged in the following activities are exempt under this provision: ' . . . transporting to the slaughterhouse, stockyards, or other place where the livestock is to be sold; receiving same, weighing, or otherwise determining the basis for payment to producers; grading; and selling; slaughtering, and dressing, i. e., bleeding, removing head, hide, hair, entrails, and dirt.' 'Dressing' is thus given the general definition of 'cleaning', which, it is our understanding, is the position taken by the various Bureaus of the Department of Agriculture and others in a position to advise on the technical meaning of the term.

"The further question arises, however, whether (1) only the employees engaged in the handling, slaughtering or dressing of livestock are exempt, or whether (2), in addition to the employees engaged in those operations, the exemption applies to employees performing operations that are so closely associated thereto that they cannot be segregated for practical purposes and whose work is also controlled by the irregular movement of commodities into the establishment, or whether (3), all the employees in a place of employment where the employer is engaged in the handling, slaughtering or dressing of livestock are exempt. The first alternative would so restrict the exemption as not to be susceptible of practical operation; the third alternative would go far beyond the intent of the exemption to provide a certain degree of flexibility in hours during peak operations in the industry and include the manufacture of glue or tallow and the canning of meats. In the opinion of this office the middle ground is the one most likely to be accepted by the courts, and it was so stated in paragraph 23 of the Bulletin. As that paragraph states, it is our opinion that in the ordinary case none of the employees in a department separate from the

department in which the enumerated operations are performed will be exempt. The Bulletin deals with that question in somewhat general terms and we are at this time awaiting letters of inquiry from representatives of the industry in order to make possible the further definition and delimitation of the extent of the exemption.

"We believe that the interpretation contained in paragraphs 21 and 23 of the Bulletin will exempt for 14 workweeks a year those employees in meat packing houses who are from time to time normally called on to work overtime. In most meat packing houses there should be little or no necessity for the payment of overtime. Even including the parts of the industry which are exempt under our interpretation, the average hours in the whole industry during the peak month of December, 1937, were only $42\frac{1}{2}$ per week, according to official studies of the Bureau of Labor Statistics. Furthermore, the meat packing industry is one of the industries which enjoy an extremely low percentage of labor cost. In the year 1937 only 6% of the value of the product of the meat packing industry was attributable to wages as compared to approximately 8% in the food processing industries generally and approximately 16.5% in manufacturing. The negligible amount of overtime payments that might be required under our interpretation of the exemption would be far less than 1/10 of 1% of the value of the product. The amount would be so small that no difference could possibly be felt either by the livestock producers or by the consuming public.

"One more section of the Act might be mentioned. If it should ever develop that any substantial amount of overtime is necessitated, the industry may avail itself of the provision for flexibility in hours provided in

Sections 7 (b) (1) and 7 (b) (2). These Sections are described in the enclosed Bulletin No. 8.

"In conclusion, we wish to call your attention once more to the fact that the Wage and Hour Division's Interpretative Bulletins are issued in response to innumerable requests for advice on the meaning of the Act. They are not binding on industry, but industry has almost universally found it wise to abide by the cautious and conservative opinions published by the Administrator after long and careful study by his legal advisers.

"Sincerely yours,

Elmer F. Andrews
Administrator."