

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
WASHINGTON, D. C.

IN THE MATTER OF AMENDMENT OF SECTION 536.2
OF REGULATIONS, PART 536 (AREA OF PRODUCTION)
ISSUED UNDER THE FAIR LABOR STANDARDS ACT OF
1938

WHEREAS, Section 536.2 of Regulations, Part 536, provides:

"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 performs those operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed seven, or

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(d) if he performs those operations on materials all of which come from farms in the immediate locality of the establishment where he is employed and the establishment is located in the open country or in a rural community. As used in this subsection (d), 'immediate locality' shall not include any distance of more than ten miles and 'open country' or 'rural community' shall not include any city or town of 2500 or greater population according to the 15th United States Census, 1930"; and

WHEREAS, the Administrator desires to determine whether any amendment to the above Section 536.2, as it applies to the drying and canning of perishable or seasonal fresh fruits and vegetables, is necessary to carry out the intent of Congress;

NOW, THEREFORE, for the purpose of ascertaining whether any such amendment is necessary to carry out the intent of Congress and, if so, the nature of the amendment, notice is hereby given of a public hearing to begin at 10:00 a.m. on May 9, 1940, at the Willard Hotel, 14th Street and Pennsylvania Avenue, N. W., Washington, D. C., before Merle D. Vincent, Director, Hearings Branch, at which hearing interested

parties will be heard on the following question:

"WHAT IF ANY AMENDMENT SHOULD BE MADE OF SECTION 536.2 OF REGULATIONS, PART 536, IN RESPECT TO THE DEFINITION OF 'AREA OF PRODUCTION' FOR THE DRYING AND CANNING OF PERISHABLE OR SEASONAL FRESH FRUITS AND VEGETABLES."

Any person desiring to appear at the aforesaid hearing may appear on his own behalf or on behalf of any other person or may file a written statement.

Evidence will be received on all relevant factors, including:

- (1) Percentage of plants, employees, and of industry pack now exempt from the Act.
- (2) Characteristics of the exempt plant as distinguished from the non-exempt plant, i.e., size, location, distance from within which commodities are obtained from farms, and hourly earnings of employees.
- (3) Competition between regions and between the exempt and non-exempt plants locally and on national markets.
- (4) Ratio of labor costs to total operating costs in both exempt and non-exempt plants.
- (5) Changes in costs as a result of the Fair Labor Standards Act and effect of changes in costs on (a) farmers' prices, (b) prices to consumers, (c) consumption of products, and (d) productivity of labor.
- (6) Availability of markets to farmers.
- (7) Number of workweeks of more than 44, 42, and 40 hours worked during the past three seasons by exempt and non-exempt plants.
- (8) Fluctuations in number of employees and volume of fruits and vegetables handled from week to week during the past three seasons.
- (9) Types of occupational skills required in, and available supply of labor for, both exempt and non-exempt plants.

Anyone desiring to appear must file a notice of intention to do so with the Administrator of the Wage and Hour Division, United States

Department of Labor, and should, if he desires a change in the above Section 536.2, set forth the amendment which he proposes. The notice of intention to appear must reach the Administrator prior to 4:30 p.m., May 7.

If written statements are filed in lieu of personal appearances, they must be received prior to 4:30 p.m., May 9.

Signed at Washington, D. C., this 11th day of April, 1940.

A handwritten signature in cursive script, reading "Philip B. Fleming", is written over a horizontal line.

Philip B. Fleming
Colonel, Corps of Engineers
Administrator
Wage and Hour Division
U. S. Department of Labor