

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

FLEMING ELIMINATES DISTANCE, POPULATION PROVISIONS FROM FRUITS, VEGETABLES
"AREA OF PRODUCTION" DEFINITION, RAISES EMPLOYEE LIMIT TO TEN;
CONSIDERS PARTIAL EXEMPTION AS TO SEASONALITY

"Area of production", as this term is used in the definition covering exemption from the wage and hour provisions of the Fair Labor Standards Act of employees performing operations on fresh fruits and vegetables, was redefined today, effective October 1, 1940, by Colonel Philip B. Fleming, Administrator of the Wage and Hour Division.

At the same time, Colonel Fleming announced that Merle D. Vincent, Director of the Hearings Branch, Wage and Hour Division, has recommended the granting of a partial exemption to fresh fruit and vegetable establishments under the seasonal provisions of Section 7(b)(3) of the Act.

The new definition of "area of production" for fresh fruits and vegetables will exempt from the wage and hour provisions of the Act persons employed in establishments having 10 or fewer employees and obtaining their fruits and vegetables from farms in the vicinity. Hereafter, he said, no other fruit and vegetable establishments will be within the "area of production."

Opportunity to petition for review of Mr. Vincent's recommendation of a partial exemption as to seasonality will be allowed for 15 days (Federal Register July 24, 1940). If this determination is subsequently made final by the Administrator, fresh fruit and vegetable warehouses will be granted a 14-week exemption from the maximum hours provision of the Act, allowing them to work their employees up to 12 hours a day or 56 hours a week without the payment of overtime during that period. This exemption does not relax the requirement to pay the minimum wage.

Establishments that can, first process or pack fresh fruits and vegetables will likewise enjoy exemption from the maximum hours provisions for 14 weeks up to 12 hours a day or 56 hours a week. This exemption will be in addition to the 14-week exemptions these establishments already enjoy under Section 7(c) of the Act.

In connection with the "area of production" regulations Colonel Fleming stated that he had carefully considered the analysis of the record as well as Mr. Vincent's recommendations. He stated that these recommendations on "area of production" are in harmony with conclusions he has reached after a personal investigation of the problem in various parts of the country. He is therefore adopting Mr. Vincent's recommendations on "area of production" and promulgating regulations which will become effective on October 1, 1940.

The new regulations provide:

Withdrawal of Section 536.2(d) of Part 536 of the Administrator's regulations defining "area of production" which exempts employees performing operations on fresh fruits and vegetables in establishments in towns of less than 2,500 population and receiving all their produce from farms within ten miles of such establishments.

Exemption of employees in those plants receiving fresh fruits and vegetables from farms in the general vicinity and employing not more than 10 persons.

In his seasonal findings, Mr. Vincent determined that handling, packing, storing, preparing in their raw or natural state and first processing or canning of perishable fresh fruits and vegetables are branches of

an industry : . of a seasonal nature and entitled, therefore, to a 14-week period of exemption under Section 7(b)(3) from the maximum hours limitation of the Act. With respect to those establishments which pack, first process or can fresh fruits and vegetables, the exemption would be in addition to the 14-week exemption they now have under Section 7(c). The proposed determination would also grant a 14-week exemption period to fruit and vegetable warehouses that are currently without any exemption from the overtime provisions of the Act. These establishments however, still must pay time-and-a half overtime for all hours over 12 worked in any one day or over 56 worked in any one week during the exemption period under Section 7(b)(3).

Mr. Vincent also found that the hearings on "area of production" revealed the fact that packers and canners of the major part of the volume of fresh fruit and vegetables paid wages equal to or above the statutory minimum under the Fair Labor Standards Act before passage of this Law. Many others paying somewhat less than the minimum immediately complied with the wage provisions of the Act.

It is also found that the present definition of "area of production" limited to ten miles and to towns with populations of less than 2,500 people resulted in serious discriminations between those packers and canners within the area and those outside of it.

Many packers and canners who appeared at the hearing stated no "area of production" definition should be adopted which would seriously disturb competitive relationships. They pointed out that the present limitation of ten miles narrowed the market outlets for many farmers and also restricted

the area in which packers and canners could purchase fresh fruits and vegetables without suffering a competitive labor cost disadvantage. One of the very significant facts developed at the hearing was that a very large volume of both fresh fruits and vegetables are packed and canned in medium and large size cities as well as small towns. For example, large volumes of fresh fruits and vegetables are canned and packed in such cities as San Francisco, Oakland, San Jose, and Los Angeles, California; Baltimore, Maryland, Tampa, and Orlando, Florida; Racine, Wisconsin, and in other towns and cities of substantial size in the Midwest and other Southern areas. Further, many of these plants draw their produce from considerable distances, in some cases from 200 or 300 miles away. It is evident that such canneries and packing houses could not be considered within the "area of production" no matter how defined. Yet it is also obvious that a definition of "area of production" which excludes these large packing centers and exempts their competitors would result in unfair competitive disadvantages between employers and also in wage disadvantages between employees engaged in the same occupations.

From all the evidence it was quite clear that the minimum wage provisions of the Act do not result in any serious increased labor cost except in a few areas affecting a minor part of the Industry. Even in these areas there are plant operators willing and frequently anxious to pay the minimum wage if their competitors are also required to live up to the same fair standards. It did appear, however, that peak seasons of packing and canning employment frequently exceeded 14 weeks. It seems desirable, therefore,

to safeguard the Industry against any substantial increase in labor cost in this highly seasonal Industry occasioned by the necessity of working longer than 42 hours and payment of time and one-half for overtime. It is, therefore, being determined upon the facts disclosed that a 14-weeks seasonal exemption under Section 7(b)(3) should be granted in addition to the specific seasonal exemption provided by Section 7(c).

Practically all representatives of packing houses and canneries testified that prices were determined basically not by labor cost but by supply and demand. To the extent that there is additional labor cost and that it may affect the returns to growers it was primarily occasioned by the limitation of hours and payment of time and one-half for overtime rather than by the minimum wage rate.

Thus Mr. Vincent concluded that the present definition of "area of production" with its ten-mile and 2500-population limitations, instead of helping to eliminate the unfair methods of competition in commerce -- one of the declared purposes of the Fair Labor Standards Act -- is actually tending to perpetuate and spread such conditions.

In announcing his approval of Mr. Vincent's "area of production" recommendations Colonel Fleming stated that October 1 was chosen as the effective date in order to allow time for the industry to make such minor adjustments as might prove necessary but likewise to prevent the undue prolongation of the present unsatisfactory situation.

Colonel Fleming also stated that if no request for review of Mr. Vincent's seasonal determination is received, the seasonal exemption will be made final in fifteen days. If a request is received, it will be given the promptest possible consideration, and a final determination will be made with a minimum of delay.