

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

IN THE MATTER OF THE DETERMINATION THAT THE HANDLING, PACKING, STORING, PREPARING IN THEIR RAW OR NATURAL STATE, FIRST PROCESSING OR CANNING OF PERISHABLE OR SEASONAL FRESH FRUITS OR VEGETABLES ARE INDUSTRIES OF A SEASONAL NATURE PURSUANT TO SECTION 7(b)(3) OF THE FAIR LABOR STANDARDS ACT OF 1938, AND PART 526, AS AMENDED, OF THE REGULATIONS ISSUED THEREUNDER.

WHEREAS, application has been made by the Northwest Cannery Association, the Agricultural Producers Labor Committee, the Lakeland Highlands Canning Company, the West Virginia Horticultural Society, and sundry other parties, under Section 7(b)(3) of the Fair Labor Standards Act of 1938, and Regulations, Part 526, as amended (Regulations applicable to industries of a seasonal nature), issued by the Administrator thereunder for exemption of the handling, packing, storing, preparing in their raw or natural state, first processing or canning of perishable or seasonal fresh fruits or vegetables from the maximum hour provisions of Section 7(a) of the said Act; and

WHEREAS, on July 1, 1940, a public hearing on said applications was held in Washington, D. C., before Merle D. Vincent, Presiding Officer, the representative of the Administrator of the Wage and Hour Division, duly authorized to hear and determine whether or not the said industries, or branches thereof, are of a seasonal nature within the meaning of Section 7(b)(3) of the Fair Labor Standards Act of 1938, and Part 526 of Regulations issued thereunder (Title V, Chapter 29, Code of Federal Regulations); and

WHEREAS, following such hearing the Presiding Officer duly made his findings of fact and determined as follows:

1. Perishable or seasonal fresh fruits and vegetables are typically harvested within a period ranging from a few weeks to three or four months.

Fruit and Vegetable Packing Houses

2. Perishable or seasonal fresh fruits and vegetables are packed, handled, and prepared in their raw or natural state in establishments which receive for packing 50 percent or more of the total annual volume of fresh fruits and vegetables in a period or periods aggregating not more than 14 workweeks.

3. The packing, handling, and preparing in their raw or natural state of perishable or seasonal fresh fruits and vegetables is a branch of an industry and of a seasonal nature within the meaning of Section 7(b)(3) of the Fair Labor Standards Act and Part 526, as amended, of the Regulations issued thereunder.

First Processing and Canning Establishments

4. Perishable or seasonal fresh fruits and vegetables are subjected to first processing or are canned in establishments which typically operate during an annually recurring season or seasons of six weeks to six months and cease first processing or canning operations during the remainder of the year, except for such work as repair, maintenance, sales, or clerical work, because the fruits and vegetables are no longer available due to climatic or other natural factors.

5. The first processing and canning of perishable or seasonal fresh fruits and vegetables is a branch of an industry and of a seasonal nature within the meaning of Section 7(b)(3) of the Fair Labor Standards Act and Part 526 as amended of the Regulations issued thereunder.

Storage Warehouses

6. Storage warehouses which handle perishable or seasonal fresh fruits and vegetables receive for storing 50 percent or more of the annual volume of fresh fruits or vegetables stored in a period or periods aggregating not more than 14 workweeks.

7. The storing of perishable or seasonal fresh fruits and vegetables is a branch of an industry and of a seasonal nature within the meaning of Section 7(b)(3) of the Fair Labor Standards Act and Part 526, as amended, of the Regulations issued thereunder; and

WHEREAS, said findings and determination were duly filed with the Administrator on July 20, 1940, and have since been on file in his office, Room 5144, Department of Labor Building, Washington, D. C., and available for examination by all interested parties; and

WHEREAS, on July 24, 1940, the Administrator caused to be published in the Federal Register (5 Fed. Reg. 2649) a notice which stated that, pursuant to the provisions of Section 526.7 of the aforesaid Regulations, any person aggrieved by the said determination might, within 15 days after July 24, 1940, file a petition with the Administrator requesting that he review the action of the Presiding Officer upon the record of the hearing before the Presiding Officer; and

WHEREAS, pursuant to the provisions of Section 526.7 of the aforesaid Regulations, the American Federation of Labor, Cannery Workers Union of Southern Alameda County, California, Local No. 20843, Cannery Workers Union of Oakland, California, Local 2905, United Cannery, Agricultural, Packing and Allied Workers of America, and sundry other parties, claiming to be aggrieved by the said determination, have filed petitions with the Administrator requesting that he review the action of the Presiding Officer upon the record of the hearing before the Presiding Officer; and

WHEREAS, the only material issue presented by the said petitions for review is a legal issue as to whether or not the exemptions provided under Sections 7(b)(3) and 7(c) of the Fair Labor Standards Act were intended to operate concurrently or consecutively with respect to establishments engaged in first processing of, or in canning or packing (including handling and preparing in their raw or natural state), perishable or seasonal fresh fruits or vegetables; and

WHEREAS, the issue raised by the petitioners has been carefully considered by the Administrator; and


WHEREAS, it is the position of the Administrator that the exemptions provided in Sections 7(b)(3) and 7(c) may operate consecutively as a matter of law; and

WHEREAS, no provision is made in Section 7(c) of the Act with respect to the storing of perishable or seasonal fresh fruits or vegetables and, therefore, no problem of interpretation of Sections 7(b)(3) and 7(c) is raised by the determination of the Presiding Officer in connection with the storing of perishable or seasonal fresh fruits or vegetables; and

WHEREAS, the aforesaid petitions for review do not present any new or additional facts warranting a review of the Findings and Determinations of the Presiding Officer;

NOW, THEREFORE, pursuant to the provisions of Section 526.7 of the said Regulations, the Petitions for Review of the Findings and Determination of Merle D. Vincent, Presiding Officer, in the above-entitled matter are hereby denied and the exemption provided by Section 7(b)(3) of the Fair Labor Standards Act of 1938 will become effective on the date this notice embodying the above-quoted Findings and Determination appears in the Federal Register. The said exemption is applicable only as specified by the aforesaid Findings and Determination.

Signed at Washington, D. C., this 23rd day of August, 1940.



Philip B. Fleming
Administrator
Wage and Hour Division
U. S. Department of Labor

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