

INACTIVE

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

PRIMA FACIE DETERMINATION IN THE  
MATTER OF APPLICATION FOR EXEMPTION  
OF THE STORING AND PACKING  
OF NURSERY STOCK FROM THE MAXI-  
MUM HOURS PROVISIONS OF THE FAIR  
LABOR STANDARDS ACT OF 1938, PUR-  
SUANT TO SECTION 7(b)(3) AND PART  
526 AS AMENDED OF THE REGULATIONS  
ISSUED THEREUNDER

WHEREAS, application has been filed by the American Association of Nurserymen, Inc., for the exemption of the storing and packing of nursery stock from the maximum hours provisions of the Fair Labor Standards Act of 1938, pursuant to Section 7(b)(3) and Part 526 as amended of the regulations issued thereunder.

WHEREAS, it appears from the said application and upon further investigation that:

1. Nursery stock is stored and packed, in specially designed storing and packing sheds, by nurserymen who grow all their stock, purchase all of it, or in part grow and in part purchase it; and
2. Each fall nursery stock is dug from the fields and moved into storage for eventual packing and packaging in the early spring or is dug in the spring or fall and immediately packed for both wholesale and retail distribution; and
3. Although the cultivation of nursery stock is conducted throughout the year, all such stock, without substantial exception, is received for storage or packing within a 14 week period or periods, and in all cases 50 percent or more is received for storage or for packing during this period or periods; and
4. The storing and packing of nursery stock, as distinguished from the growing thereof, appear to constitute a separate branch of the industry.


NOW, THEREFORE, upon consideration of the facts stated in the said applications and upon further investigation, the Administrator hereby determines, pursuant to section 526.5(b)(ii) of the regulations that a prima facie case has been shown for the granting of an exemption pursuant to section 7(b)(3) of the Fair Labor Standards Act of 1938 and Part 526 of the regulations to the storing and packing of nursery stock.

In accordance with the procedure established by section 526.5(b)(ii) of the regulations, the Administrator for fifteen days following the publication of this determination will receive objection to the granting of the exemption and request for hearing. Upon receipt of objection and request for hearing, the Administrator will set the application for the hearing before himself or an authorized representative.

If no objection and request for hearing is received within fifteen days, the Administrator will make a finding upon the prima facie case.

These applications may be examined at Room 5309, United States Department of Labor, Washington, D. C.

Signed at Wsshington, D. C., this 5th day of November, 1940.



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

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