

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

IN THE MATTER OF APPLICATION FOR 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, application was 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 appeared from 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.

WHEREAS, on November 14, the Administrator caused to be published in the Federal Register (5 F. R. 4475) a notice which stated that (a) upon consideration of the aforesaid facts, the Administrator determined pursuant to section 526.5 (b)(ii) of the regulations that a prima facie case had 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, that (b) in accordance with the procedure established by section 526.5(b)(ii) of the regulations, the Administrator for fifteen days thereafter would receive

objection to the granting of the exemption and request for hearing from any interested person, and upon receipt thereof would set the application for the hearing before himself or an authorized representative, and that (c) if no objection and request for hearing was received within fifteen days, the Administrator would make a finding upon the prima facie case; and

WHEREAS, no objection and request for hearing was received by the Administrator within the said fifteen days;

NOW, THEREFORE, pursuant to section 526.5(b)(ii) of the regulations, as amended, the Administrator hereby finds on the prima facie case shown in the said application that the storing and packing of nursery stock is an industry of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act of 1938 and regulations issued thereunder, and therefore is entitled to the exemption provided in section 7(b)(3) of the said act.

Signed at Washington, D. C., this 2nd day of December, 1940.



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

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