

TITLE 29 -- LABOR
CHAPTER V - WAGE AND HOUR DIVISION

IN THE MATTER OF APPLICATIONS FOR THE EXEMPTION OF THE HANDLING, PACKING, SHELLING, OR OTHER PROCESSING OR STORING OF PEANUTS FROM THE MAXIMUM HOURS PROVISIONS OF THE FAIR LABOR STANDARDS ACT AS AN INDUSTRY OF A SEASONAL NATURE PURSUANT TO SECTION 7(b)(3) OF THE ACT AND PART 526, AS AMENDED, OF THE REGULATIONS ISSUED THEREUNDER.*

WHEREAS, applications have been filed by the Macon Peanut and Storage Company of Macon, Georgia and sundry other parties for the exemption of the handling, packing, shelling or other processing or storing of peanuts from the maximum hour provisions of the Fair Labor Standards Act as an industry of a seasonal nature pursuant to Section 7(b)(3) of the Act and Part 526, as amended, of the Regulations issued thereunder; and

WHEREAS, the Administrator of the Wage and Hour Division gave notice of a public hearing to be held at the Willard Hotel, Washington, D. C. on September 16, 1940, before Mr. Harold Stein, who was authorized to take testimony, hear argument, and determine:

Whether the handling, packing, shelling, or other processing or storing of peanuts or any subdivision or combinations thereof are industries of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526, as amended, of the Regulations issued thereunder, and if so the appropriate limitation of such industries.

WHEREAS, following such hearing the said Harold Stein duly made his findings of fact and determined as follows:

1. Peanut milling and peanut warehousing (other than mill warehousing) are separable branches of the peanut industry.
2. Peanut milling may continue throughout the entire year, may be intermittent due to fluctuations in demand, or may take place during an annually recurring part or parts of the year and cease entirely for a short time thereafter. None of these operations is of a seasonal nature within the meaning of this term as set forth in section 526.3(a) of the regulations because the period of shutdown, if any, is only intermittent or because

* This affects tabulation contained in Section 526.101, Code of Federal Regulations.

it is too short to be consistent with the 14 workweek statutory exemption period, and because the shutdown, if any, is not caused by any natural unavailability of peanuts for shelling; and none is of a seasonal nature within the meaning of section 526.3(b) of the regulations because the shelling of peanuts cannot be considered as the packing or storing of agricultural commodities in their raw or natural state.

The shelling of peanuts in milling establishments, therefore, is not an industry of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act and part 526 of the regulations issued thereunder.

3. The storing of peanuts in mill warehouses is incident to and integral with the milling operations and is not a separable branch of the peanut industry. For this reason and because the cleaning and shelling of peanuts in milling establishments is not an industry of a seasonal nature, the storing of peanuts in mill warehouses is not an industry of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act and part 526 of the regulations issued thereunder.
4. Warehouses (other than mill warehouses) which store unshelled peanuts exclusively or substantially so, receive each year for storage in excess of 50 percent of their annual volume during a 14 week period and constitute a branch of an industry, of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act and part 526 of the regulations issued thereunder.
5. Application for exemption under section 7(b)(3) for the warehousing of peanuts in warehouses (other than mill warehouses) which store unshelled peanuts exclusively or substantially so, is granted. Application for exemption under section 7(b)(3) for the cleaning, shelling, and storing of peanuts in milling establishments is denied.

No appearances were made in support of the exemption of peanut crushing or other processing of peanuts, except peanut cleaning and shelling, and no finding can be made thereon; and

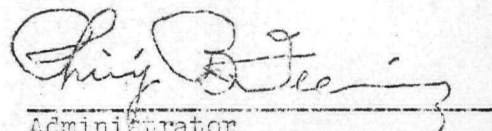
WHEREAS, said findings and determination were duly filed with the Administrator on November 15, 1940, and are now on file in Room 5144, Department of Labor Building, Washington, D. C., and available for examination by all interested parties;

WHEREAS, on November 19, 1940 the Administrator caused to be published in the Federal Register (5FR4549) 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 fifteen days after November 19, 1940 file a petition with the Administrator requesting that he review the action of the said representative upon the record of hearing before the said representative; and

WHEREAS, no petition for review has been filed within the said fifteen days:

NOW, THEREFORE, pursuant to the provisions of Section 526.7 of the said Regulations, the exemption provided by Section 7(b)(3) of the Fair Labor Standards Act of 1938 will become effective on the date this notice 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 December, 1940.



Administrator
Wage and Hour Division
Department of Labor

Published in Federal Register December 27, 1940.

####