

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

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW OF THE DETERMINATION IN THE MATTER OF APPLICATIONS FOR THE EXEMPTION OF THE RECEIVING OF GRAIN, SOY BEANS, FLAXSEED, AND BUCKWHEAT INTO GRAIN ELEVATORS FROM THE MAXIMUM HOURS PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938 AS INDUSTRIES 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 were filed by the National Grain Trade Council, the Millers' National Federation, and sundry other parties for the exemption of the storing of grain, soy beans, flaxseed, and buckwheat in grain elevators 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 Chicagcan Hotel, Chicago, Illinois on December 9, 1940, before Mr. Burton D. Seeley, who was authorized to take testimony, hear argument, and determine:

Whether the storing of grain, soy beans, flaxseed, and buckwheat in grain elevators or any subdivisions 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 Burton D. Seeley duly made his findings of fact and determined as follows:

Country Grain Elevators

1. Country grain elevators, as that term is commercially defined, are engaged in the storing of grain, including soy beans, flaxseed and buckwheat, in their raw and natural state; and
2. Country grain elevators receive for storing 50 percent or more of their total annual volume of grain in a period or periods aggregating not more than 14 workweeks; and
3. The storing of grain, including flaxseed, buckwheat, and soy beans, by country grain elevators is a branch of the grain storage industry and it is of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act and of Part 526 of the regulations issued thereunder. 1/

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1/ The practical effect upon employees engaged during a single workweek in activities part of which are within the grain elevator industry and part of which are in some other industry need not be decided herein. The present determination is merely that the grain storage in country elevators, which may also do some other business, is nevertheless part of the grain storage industry.

Public Terminal and Sub-Terminal Elevators

4. Public terminal and sub-terminal grain elevators, as those terms are commercially defined, are engaged in the storing of grain, including soy beans, flaxseed and buckwheat in their raw and natural state; and
5. Public terminal and sub-terminal grain elevators receive for storing 50 percent or more of their total annual volume of grain in a period or periods aggregating not more than 14 workweeks; and
6. The storing of grain, including soy beans, flaxseed, and buckwheat, by public terminal and sub-terminal grain elevators is a branch of the grain storage industry and it is 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; and

Mill Elevators

7. Wheat flour mill elevators, as such elevators are commercially defined, do not constitute a separate and distinct branch of the storage industry but conduct their grain storage operations as an integral part of the flour milling industry and do not constitute a branch of the grain storage industry within the meaning of section 7(b)(3) of the Fair Labor Standards Act and Part 526 of the regulations issued thereunder.

Cash Grain Commission Merchants

8. Cash grain commission merchants are not engaged in the storing of grain within the meaning of section 7(b)(3) of the act and Part 526 of the regulations issued thereunder.

Exemption is accordingly granted to country grain elevators and to public terminal and sub-terminal grain elevators as these groups are commercially defined.


Exemption is denied wheat flour mill elevators and cash grain commission merchants.

No determination is possible on the flat warehousing of grain in sacks, the storage of grain by processors other than flour millers, or the storage of grain in combination with grass or legume seeds.

WHEREAS, said findings and determination were duly filed with the Administrator on April 11, 1941, and are now on file in Room 5144, Department of Labor Building, Washington, D. C., and are available for examination by all interested parties.

NOW, THEREFORE, pursuant to the provisions of section 526.7 of the aforesaid regulations, notice is hereby given that any person aggrieved by the said determination may, within fifteen days after the date this notice appears in the Federal Register, 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.

Signed at Washington, D. C., this 18th day of April, 1941.

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