

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

NOTICE OF ORAL ARGUMENT BEFORE THE ADMINISTRATOR AND OPPORTUNITY TO SUBMIT WRITTEN BRIEFS IN THE MATTER OF APPLICATIONS OF THE NATIONAL GRAIN TRADE COUNCIL, MILLERS' NATIONAL FEDERATION, AND SUNDRY OTHER PARTIES 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 having been made by the National Grain Trade Council, Millers' National Federation, and sundry other parties under Section 7(b)(3) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the regulations issued thereunder 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 as industries of a seasonal nature pursuant to Section 7(b)(3) applicable to industries found by the Administrator to be of a seasonal nature; and

WHEREAS, a preliminary determination was made that a prima facie case had been shown for the granting of the aforesaid exemption for the receiving of grain, soy beans, flaxseed, and buckwheat into grain elevators and notice thereof was published in the Federal Register under date of July 26, 1940, in accordance with the procedure established in Section 526, as amended, of the regulations; and

WHEREAS, within 15 days following that preliminary determination, the Administrator received objection and request for a public hearing; and

WHEREAS, a public hearing was held on said applications, at Chicago, Illinois, on December 9, 1940, before Burton D. Seeley, Presiding Officer, the representative of the Administrator duly authorized to take testimony, hear argument, and determine whether or not the receiving of grain, soy beans, flaxseed, and buckwheat into grain elevators is an industry 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, following said hearing, the aforesaid Burton D. Seeley, Presiding Officer, duly made his Findings and Determination 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/}

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.

^{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.

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; and

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

WHEREAS, on April 19, 1941, the Administrator caused to be published in the Federal Register 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 April 19, 1941, file a petition with the Administrator requesting that he review the action of the said representative upon the record of the hearing before said representative; and

WHEREAS, petitions for review, copies of which are on file in Room 5144, Department of Labor Building, Washington, D. C., and there available for examination by all interested parties, have been duly filed by the Millers' National Federation and sundry other parties; and

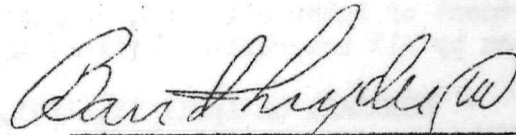
WHEREAS, a petition for a rehearing in order to present additional evidence relating to the flat warehousing of grain in sacks, in California, a copy of which is on file in Room 5144, Department of Labor Building, Washington, D. C., and is available for examination by all interested parties, has been duly filed by the California Warehousemen's Association,

NOW, THEREFORE, said petitions are hereby granted for the purpose of reviewing the Presiding Officer's Findings and Determination granting an exemption to country grain elevators and to public terminal and sub-terminal elevators and denying an exemption to flour mill elevators and cash grain commission merchants; and notice is hereby given that the Administrator for the purpose of reviewing the aforementioned Findings and Determination and to make a final determination of the issues herein set forth, will receive briefs (not fewer than six copies) on or before May 24, 1941, at the Department of Labor, Wage and Hour Division, Washington, D. C., from any interested person, either in support of or in

opposition to the aforementioned Findings and Determination, and will hear oral argument upon the complete record of said hearing on May 29, 1941 at 10:00 o'clock a.m. in Conference Room C, Department of Labor Auditorium, Fourteenth Street and Constitution Avenue, N. W., Washington, D. C., by any interested person either in support of or in opposition to the Findings and Determination of the Presiding Officer, provided that on or before May 24, 1941, such person notifies the Wage and Hour Division of his intention to offer oral argument and of the amount of time he will require to make his presentation.

Said petition for rehearing in the matter of the flat warehousing of grain in sacks, in California, is hereby granted, and the matter is remanded to the Director of the Hearings Branch of the Wage and Hour Division for the purpose of holding such a rehearing.

Signed at Washington, D. C., this 14th day of May, 1941.



Baird Snyder, Acting Administrator
Wage and Hour Division
United States Department of Labor

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