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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS

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OVERTIME EXEMPTIONS FOR PROCESSING OF AGRICULTURAL
COMMODITIES CLARIFIED UNDER WAGE-HOUR LAW

CB-160

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A clarification of the interpretations of the exemptions from the hours provisions of the Fair Labor Standards Act provided by section 7(c) of the Act was issued today by L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor. The clarification deals with the Division's position on processing of agricultural commodities. It is the result of certain judicial decisions and the Division's experience with economic and administrative problems relating to these exemptions, and is intended to effectuate more completely the intent of Congress as evidenced by the terms of the statute.

Mr. Walling stated that any revised interpretations contained in the clarification which involve a narrowing of the exemption would not be adopted for enforcement purposes until March 1, 1943. This will give the industries affected an opportunity to appraise the effect of the changes, and to plan any modification of their operating methods which they may deem appropriate, without the risk of governmental action based upon failure to comply with the Division's interpretations as revised. He also pointed out, however, that his enforcement policy could not of course bar the right of employees to maintain independent suits under section 16(b) of the Act.

Section 7(c) provides that "in the case of an employer engaged" in certain described operations on seasonal agricultural commodities, the overtime provisions of the Act "shall not apply to his employees in any place of employment where he is so engaged." The exemption extends throughout the year for some types of operations, but is limited to 14 workweeks annually for others.

A. Employees Who Are Exempt

In the case of Fleming v. Swift & Co., 41 F. Supp. 825 (N.D. Ill.), the Court held that the exemption provided by section 7(c) for "handling, slaughtering, or dressing * * * livestock" is applicable to those employees who are actually engaged in such operations, and, in addition, to "any employee whose employment during any workweek is wholly within the place of employment, as herein defined, and who during that workweek is working exclusively in an occupation which is a necessary part of the handling, slaughtering or dressing of livestock." "Place of

employment" was defined as "those portions of the plant devoted by the employer to the handling, slaughtering or dressing of livestock."*

Since all of the exemptions provided by section 7(c) are phrased in the same general language and since they are all applicable to the packing or processing of seasonal agricultural commodities, the Administrator has concluded that the holding of the Court quoted above not only applies to the handling, slaughtering, or dressing of livestock, but also to all of the other section 7(c) exemptions. It is therefore his opinion that the section 7(c) exemptions are applicable to the following two groups of employees: (1) those who actually perform the operations described in the section, and (2) those employees whose occupations are a necessary incident to the described operations, and who work solely in those portions of the premises devoted by their employer to the described operations. Only those employees who come within one or the other of these two categories are exempt.

When an establishment is exclusively engaged in performing operations specifically mentioned in section 7(c), every employee working in such a plant either will be actually engaged in the described operations, or else will be engaged in an occupation which is a necessary incident to the described operations and working solely in a portion of the premises devoted by his employer to such operations. Therefore, when an establishment is exclusively engaged in activities enumerated in the section, all of the employees of the operator of the establishment who work solely in that establishment, including office employees, watchmen, maintenance workers and warehousemen, come within the scope of these exemptions. In such a situation, the exemptions also apply to those employees of the plant operator whose duties consist of hauling agricultural commodities from the fields or from receiving stations to the plant for packing or processing, and to those who transport to market or to carriers for transportation to market goods upon which exempt operations have been performed in the plant.

* See also Walling v. Bridgeman-Russell Co., F. Supp. (D. Minn. 1942).

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On the other hand, the section 7(c) exemptions are inapplicable to any employee working in a packing or processing plant whose duties relate to goods upon which "canning," "packing" or other operations described in the section have been performed in another plant. Such an employee is neither performing the operations described in the section nor is his work in relation to such goods a necessary part of the exempt operations performed in the plant where he works. Moreover, where warehousemen, office help, or other employees work in a building which is on separate premises from that on which the packing or processing plant is located, they do not work in the place of employment where their employer engages in activities described in the section, and therefore such employees are not exempt. However, a warehouse located across the street or across a railroad right-of-way from the packing or processing establishment may be considered part of the same premises.

The purpose of section 7(c), as shown by the legislative debates, was to relieve processors and packers of seasonal agricultural commodities from the burden of paying overtime compensation during those peak seasons of the year when large fluctuating quantities of perishable agricultural commodities move from the farms to the processing establishments, which commodities must be processed as soon as they arrive. It therefore seems that the taking of the section 7(c) exemptions during the dead season is contrary to the legislative intent, and in the opinion of the Administrator these exemptions may not be taken in regard to any employee during periods of the year in which the plant is not actually engaged in operations described in the section. The Division has consistently followed this interpretation since the effective date of the Act and it was recently sustained in Heaburg v. Independent Oil Mill, Inc., 5 Wage Hour Rept. 777 (W.D. Tenn. 1942).

To summarize, the following general rules govern the application of the section 7(c) exemptions:

If an employer does not himself carry on any of the operations specifically mentioned in section 7(c), none of his employees come within the scope of the exemptions. If he does carry on such operations, the following two groups of employees are exempt:

- (1) those who exclusively engage in the operations described in the section; and
- (2) those employees whose occupations are a necessary incident to the described

operations, and who work solely in those portions of the premises devoted by their employer to the described operations. When a plant exclusively engages in activities enumerated in the section, all of the employees of the operator of the plant who work solely in that plant are exempt. On the other hand, employees whose duties relate to goods upon which the described operations have been performed in another plant and employees working in a building which is on separate premises from that on which the exempt plant is located do not fall within either of the two groups of exempt employees and hence are not exempt. An employer may take the section 7(c) exemptions only during periods in which he is actually engaged in performing operations described in the section.

B. Independent Contractors

The following general rule can be laid down in regard to the application of the section 7(c) exemptions to employees of independent contractors:

Where an independent contractor is engaged by a packer or canner or other processor of agricultural commodities to perform operations in a packing or processing establishment, the employees of the independent contractor do not come within the section 7(c) exemption unless the independent contractor actually carries on an operation which falls within the scope of the terms "canning," "packing," "first processing," or any other operation described in section 7(c) so as to be entitled to the exemption in his own right as a canner, packer, etc. If the contractor is so engaged, the exemption is applicable (1) to those of his employees who perform the operations described in section 7(c), and (2) to those of his employees whose occupations are a necessary incident to the described operations, and who work solely in those portions of the premises devoted by their employer to those operations.

C. Particular Operations

It sometimes requires careful analysis to determine whether certain activities come within the scope of the operations specifically mentioned in section 7(c). This release will deal with some of these problems which are of most common occurrence and which involve the largest number of employees.

1. Labeling, Stamping and Boxing of Canned Fresh Fruits and Vegetables

The Administrator is of the opinion that the labeling, stamping and boxing of canned fresh fruits and vegetables, and other similar activities performed in connection with canned goods, are not "canning * * * perishable or seasonal fresh fruits or vegetables" unless these activities follow immediately after the hermetic sealing and cooling of the cans. Where the labeling, stamping and boxing occur immediately after the hermetic sealing and cooling, the employees engaged in these activities are exempt, regardless of whether they are employed by the canner or by an independent contractor. If these operations are not performed immediately after the hermetic sealing and cooling, they are not "canning" within the meaning of section 7(c), and if the labeling, stamping and boxing are performed by employees of an independent contractor, the employer is not thereby engaged in any of the operations described in the section and therefore none of his employees is exempt. If the labeling, stamping and boxing do not follow immediately after the sealing of the cans but are performed during the active season by employees of the canner, the workers engaged in such operations are exempt, provided that these operations are conducted in those portions of the premises devoted by their employer to canning. Where an establishment is solely engaged in the canning of fresh fruits and vegetables, the labeling, stamping and boxing of the canned goods during the active season by employees of the canner are exempt operations if performed in the cannery or in a warehouse located on the same premises as the cannery.

On the other hand, activities performed in a warehouse located on premises separate from the cannery are not conducted in the place of employment where the canning is done, and the exemption is inapplicable to all of the employees working in such a warehouse. Furthermore, employees working on the cannery premises who handle or work on goods canned in another cannery are not exempt.

2. Cooling of Fresh Fruits and Vegetables

It is the position of the Administrator that the following cooling operations are part of "packing perishable or seasonal fresh fruits or vegetables": The precooling of the fresh fruits and vegetables in the packing plant by means of ice, water, or cold air; and the placing of layers of crushed ice in the crates with the fruits and vegetables. On the other hand, the placing of crushed ice on top of the filled crates after they have been loaded into refrigerator cars for shipment; the blowing of water, cold air or ice over the packed fresh fruits and vegetables after they have been loaded in the cars; the recooling or bunker icing or reicing of refrigerator cars; and the cooling of empty cars before they are loaded with filled crates are not "packing" fruits and vegetables.

If cooling operations are of the type described above as constituting "packing," the employees engaged in such operations are exempt, whether they are employees of the packer or of an independent contractor. On the other hand, if the cooling activities are those described above as not constituting "packing" and are performed by an independent contractor, the employees engaged in such activities are not exempt. Where the cooling activities do not constitute "packing" but are performed by employees of the packer, such employees come within the scope of the exemption, provided that these activities are conducted solely in those portions of the premises devoted by their employer to packing. Thus, where an establishment is solely engaged in the packing of fresh fruits or vegetables and refrigerator cars are spotted on tracks adjoining the plant, the employees of the packer engaged in the bunker icing or in cooling cars solely for use in shipping fresh fruits and vegetables packed in that establishment are exempt.

3. Assembling Box Shook used in Packing Fresh Fruits and Vegetables

The Administrator is of the opinion that the assembling of box shook for use in packing fresh fruits and vegetables constitutes "packing" if performed in the packing house as part of a continuous operation with the packing of such fruits and vegetables. If so performed by employees of an independent contractor, they are engaged in packing. The exemption also applies to employees of the packing house operator who, during the active season, assemble box shook solely in the portions of the premises devoted to packing, even if assembling the shook does not

immediately precede the packing as part of a continuous operation. If the plant is used solely to pack fresh fruits and vegetables, the assembling of box shock by employees of the packer is exempt when performed during the active season solely in the packing plant or in a warehouse located on the same premises.

4. Manufacturing Cans, Ice and Boxes
for use in Canning and Packing Fresh
Fruits and Vegetables

The manufacture of cans for use in canning fresh fruits and vegetables is not "canning," and, in the opinion of the Administrator, such manufacturing is too far removed to be considered "a necessary part" of canning. Accordingly, the manufacture of cans is not exempt, even though performed by a canner on the cannery premises solely for his use in canning fresh fruits or vegetables. For the same reasons, the manufacture of ice and of boxes and box shock for use in packing fresh fruits and vegetables is not exempt.

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Insofar as Interpretative Bulletin No. 14, the general instructions issued for the canning and packing drives of 1941, release R-1561, and any other interpretations issued by the Division are inconsistent with the opinions expressed above, the prior interpretations should be regarded as hereby superseded. However, this press release is not intended to supersede the Division's Interpretative Bulletin No. 14 That bulletin remains in effect except as it has been or may be modified by official statements of the Division.