For release upon delivery,
approximately, 2:30 p.m.,
October 6.

R-23a

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Speech delivered by Elmer F. Andrews, Administrator,
Wage and Hour Division, U. S. Department of Labor,
Before the Nath. Assn of Cotton Mfgs.
at the Copley-Plaza Hotel in Boston, Massachusetts
at approximately 2:30 p.m., October 6

Industry as we know it in the modern world started in England. Industry as we know it in America started in New England. Along the mill seats of the fast flowing rivers from the mountains to the sea were set up the first mills and in thousands of sheds and shops from the Maine woods to the southern borders of Connecticut were set up small factories which produced goods of every description made of fabrics, leather, and metal. In these same small factories and shops was nurtured the greatest flowering of inventive genius the world has ever known. Good flowed from New England throughout the Colonies and across the seven seas, forming the bulk of trade for raw materials in the colonies and later in the States along the frontiers and in foreign countries. Along with this output of goods went, increasingly, machinery.

As in the history of that other great industrial and mercantile country, New England machinery followed and tended to catch up with the manufactured goods so that over longer periods of time the machinery sent out tended to come into competiton with the machinery set up at home. Industrialization has always carried with it its own new and special problems, the problems of production costs and market competition. New England, first to develop industrially, was

the first to face and feel these problems of production costs and competition. Large in the item of production costs has been the problem of wages and hours. From the early days of Massachusetts, there has been the problem of providing fair wages for reasonable hours of work while at the same time getting the goods to market at a price that would meet the competition of other producers.

In the textile industry particularly, New England manufacturers and labor have had long and difficult experience with the keenest sort of competition. Capital, sometimes dissatisfied with a narrow profit spread in New England textile operation, in some instances participated in the financing of plants elsewhere in the hope that lower production costs would make possible more profitable operation. We have seen, as a result of the migration of textile industry, the ghosts of factories in Fall River and other New England cities whose names were once known all over the world for the quality and quantity of their textile output. It is a tribute to the indomitable character of New England that this tendency has not been accepted by you but instead unceasing efforts have been made to check the trend and find ways to hold and to develop these or other industries. I take it that, although New England manufacturers by tradition and training have principally relied upon their own ingenuity to get them out of difficulties and keep them in the market, there has been a general recognition recently of the usefulness, even the necessity, of government assistance in providing a measure of equilibrium in production costs, particularly in the large item of wages and hours. It was this recognition that was, I presume, responsible for

the acceptance and support of the wage and hour bill. It is the reason why today you look forward with hope, perhaps mixed with a degree of apprehension, to the application of the Fair Labor Standards Act. I trust that the administration of that Act will justify your hope and that whatever apprehension you may have had was exaggerated.

The application of the wage and hour provision of the Fair Labor Standards Act is at once one of the most gigantic and delicate administrative jobs imaginable. If it is to be fair, it must be uniformly enforced. All employers subject to the Act must have an even start and must be permitted to run an even race without handicap or advantage. In the administration of this Act we are dealing with the most vital item in the productive process -- wages and hours. Fortunately, at the beginning, the enforcement of the Act does not wholly depend upon the administration machinery set up under the Act. To an important degree, the Act can be enforced without the administrative machinery. Employees can bring civil action for the collection of wages and overtime payment when they have been paid less than the minimum provided under the Act. In a way then, the wage and hour provisions may be said to be self-enforcing. We hope, even in the limited time and with the limited money available for building up a staff, to have enough people at work in the next month to receive and act on complaints and violations of the wage and hour provisions.

In coming to speak to this group of textile manufacturers, I feel that I am addressing a group which probably more than any other employer group, is responsible for the Federal Fair Labor Standards Act.

Your group has been out in front among the leaders in advocating legislation which would permit employers to maintain and elevate workers' standards without leaving them open to ruinous competition of industrialists who do not maintain those standards.

During the crisis in 1933, while NRA was getting under way, your industry came forward with a code to lead the way. And now with the enactment of the Fair Labor Standards Act of 1938 your industry has again shown the way. Its conditions are such, and its leadership is such, that the first group to be named under the industry committee provisions of the Law has been that for the textile industry. Conditions in your industry have been such that you have been most keenly aware of the usefulness, the necessity, of government assistance in working out solutions of your problems.

Last week I spoke before the Southern States Industrial Council in Birmingham, Alabama, and their attitude toward the Law and its administration was most heartening. Their willingness to cooperate, like yours, will aid us materially in the work that we have to do.

The Wage and Hour provisions of the Fair Labor Standards Act, as you know, become effective on October 24, less than three weeks from today. After that date it will be illegal for any employee engaged in interstate commerce or in making goods for shipment in interstate commerce to be paid less than 25 cents an hour or to be worked at regular pay for more than 44 hours in any one week. There are certain exceptions and exemptions to these general provisions, but there is no exception as to the date on which these provisions take effect for those persons who come under the Act.

Now I need not discuss here the reasons for a Law such as the Fair Labor Standards Act of 1938. Every member of an association of cotton manufacturers has undoubtedly heard repeated many times the arguments in favor of a Federal law which would eliminate sweatshop competition furnished by producers operating under conditions that permitted low wages and long hours. You all know that wage and hour standards which have existed in some States for many years have been lacking in other States.

Modern economic conditions, and our experience in the United States during the last decade, have demonstrated that only by Federal action can we effectively place a floor under wages and a ceiling over hours. Only by Federal action can we make sure that the members of an industry who maintain adequate work standards shall be protected from the ruinous competition of those whose ability to compete unfairly rests upon sweatshop conditions.

The Fair Labor Standards Act, as you well know, is a compromise; a compromise among groups whose attitude toward legislation of this kind has been largely determined by conditions existing in their industry or in their locality.

One of the great problems affecting a Law like this is the demand for differentials. As you know, this Act specifically forbids differentials based on geography, on age or on sex. The Law does provide, however, for differences prevailing in different industries and different localities. In the making of wage orders, industry committees are required to take into consideration competitive conditions as affected by transportation, living and production costs; and the wages for similar work established in collective bargaining agreements or voluntarily maintained by the better employers.

There are many other provisions in which you have a special interest, but I believe that here this afternoon you will be most interested in our plans for the administration of the Law. Most of you are familiar with the Law itself, and to a large extent the questions which you will want me to answer involve interpretations and must await a decision of our legal staff. There are, however, a number of questions which I shall be able to answer for you this afternoon.

As to the administration of the Act, I want to say at once that we expect the cooperation of industry to a very large extent. In fact, so encouraging has been the response on the part of employers all over the United States that I have been relieved of much of the alarm which I felt when I realized that the Law goes into effect in three weeks, and we have not yet assembled our necessary personnel. For a while I felt some apprehension at the thought of the job we have to do during the small time in which we have to do it, but assurances of cooperation and an evident willingness to meet us halfway have encouraged me to believe that this job may not be as tough as my friends have represented it to be.

The Wage and Hour Division is speedily getting into shape to handle the most immediate requirements of the Law. Our plans are motivated by a desire principally to cooperate with the employer who expects, and is willing, to comply with the Law. We want to make sure that regardless of whatever a few recalcitrant persons may do, those who accept the Law shall not be handicapped in their desire to meet us halfway. We want to tell every employer exactly what is required to comply with the Law, clearly, simply and as quickly as will be consistent with accuracy.

I have mentioned the special part which the textile industry played in our effort toward rehabilitation during the days of the N.R.A. The textile industry made a real contribution to the economic stability of the Nation.

The gains made at that time are worthy of attention. After less than two years of code regulation for industry, as a whole, the weekly average income of workers was increased 12 percent and employment rose 18 to 19 percent. What did this mean? The lower paid were afforded additional buying strength, the effective demand for goods and services was increased, and, there was a revival of industrial and commercial activity, throughout the Nation.

Upon the invalidation of the National Industrial Recovery Act, the textile industry made every effort to maintain the standards which had been set, but, as you well know, this is difficult to do. In every industry, there is an irresponsible or hard-pressed minority bent on profit-taking and on competing, not by excellence of output, but by cutting wages.

You have had your share of such cutthroat competition. Government studies, covering a sample group of 448 cotton textile mills for the year from April 1935 to April 1936, showed the demoralization that the unrestrained chiseler brings. In that year, many of the 448 firms made no decrease in hourly earnings, and some actually, raised wages. Yet a small group used wage cutting as the answer to every problem. They cut wages, and this was the result: The average hourly earnings of the cotton textile concerns investigated—the average for all 448, including many, which had raised wages—dropped sharply.

Such a situation, if allowed to go unchecked, produces disaster. Remember that five years ago, factory pay rolls were the lowest since the turn of the century. Actual wages were lower and hours of work longer than at any time since the World War. Employment was lower than at any time since 1910.

What happened to the individual worker? A new low in substandard living conditions was reached. Sweatshop conditions abounded. Standards of human decency were violated freely.

What happened to the nation? With total income cut in half, and with the competitive system denying to its customers sufficient purchasing power, there followed bank failures, industrial collapses, near riot and bloodshed. Wage-earners, farmers, business men, and investors all suffered.

The movement for some form of Federal regulation of wages and hours gained momentum. In that movement the textile industry, drawing upon a wealth of experience, was prominent, and its proposals are substantially embodied in the law as finally passed.

You asked that oppressive child labor be prohibited; the Act prohibits it. You asked for a minimum wage provision which would uniformly apply to all industries affected by the Act; the Act provides this. It sets a minimum wage of 25 cents an hour effective October 24. At the end of one year this minimum advances to 30 cents an hour, and at the end of seven years it advances to 40 cents an hour. You asked for a maximum hour provision which would uniformly apply to all industries affected by the Act; the law provides this, too. It provides for a limit of 44 hours a week at regular pay for a year after October 24, for the next year it stipulates a 42-hour week, and after October 1940, a 40-hour week.

Congress, in its desire to raise wage rates as soon as possible to a level above 25 cents an hour, has provided special machinery for setting higher minimum schedules, industry by industry. It directed the Administrator to appoint industry committees composed of an equal number of representatives of employers, employees, and the public. Each committee is to investigate conditions in its particular industry, and to recommend to the Administrator wage rates above 25 cents an hour but not to exceed forty cents an hour.

In making recommendations, the committee shall recommend the highest minimum wages, not to exceed 40 cents an hour, for various parts of the same industry which will not substantially curtail employment and will not give a competitive advantage to any group in the industry. In no event, however, are these variations to be determined solely on the basis of geographical location.

The textile industry committee is the first and at the present time the only industry committee to have been appointed. By administrative order its recommendations are confined to employers engaged in the manufacture and finishing of yarns and fabrics other than wool and hosiery, and include such closely related operations as cannot be satisfactorily separated. The committee has the power to appoint subcommittees, to hold public hearings at points convenient to the business and labor groups affected, and to call witnesses and take evidence. Every effort is being made to facilitate the work of the members of this committee. Related government data are being brought up to date and will be put into their hands; and if the need arises various technical committees will be appointed to assist them.

I know that you have certain apprehensions that the committee may recommend a myriad of wage schedules. Such fears, I believe, are without foundation.

Any wholesale attempt to recognize occupational differentials would result in wage recommendations so split up into special categories as to be impossible of application. For that reason, the recommendations of each industry committee should be broad enough to cover a goodly portion of the wage-earning population.

It is not my purpose to anticipate the work of the textile industry committee, but I do want to express my confidence in its membership.

It is composed of twenty-one individuals who have distinguished themselves in every walk of life, and it is headed by the able Donald Nelson of Chicago, vice president of Sears, Roebuck and Company. One of its members is Louis Kirstein, head of Filene's department store here in Boston.

Here and there I have heard doubts as to the wisdom of reposing discretionary power in the hands of a group such as an industry committee. May I make clear that there has been no autocratic grant of authority. Democratic processes have been made an essential part of the procedure. After the committee has agreed upon recommendations they do not become final, but are submitted to the Administrator. He must then give due notice and hold public hearings. Then and only then does the Administrator pass upon the reasonableness of the committee's recommendations; and taking into account the same factors which the Act requires to be a fundamental part of the deliberations of the committee, the Administrator puts the wage order into effect or rejects the recommendations and either refers them to the committee for further study or appoints a new committee.

Legal recourse is also available to every employer. Any person aggrieved by a wage order of the Administrator may obtain a review of such order in a circuit court of appeals in the United States, or in the United States Court of Appeals for the District of Columbia. While the review of the court is limited to questions of law, if application is made to the court for leave to adduce additional evidence, and if the court is satisfied as to its reasonableness and its material relevancy, such additional evidence may be taken before the Administrator, and he may modify his findings.

With employers all over the United States affected by the wage and hour provisions of the law beginning October 24, the pressure for interpretation, rules, and regulations under the Act is, as you can appreciate, tremendous. Most urgent is the duty of the Administrator to promulgate rules and regulations of various sorts, to devise procedures for numerous fact determinations, definitions, and classifications—all of which matters will be worked out and published at the earliest moment consistent with care and deliberation in draftsmanship. These regulations and procedures cannot be drafted in a vacuum; it is necessary to consider their effect as applied to the diverse problems of very many industries.

Rules and regulations for the procedure of industry committees have already been published.

Rules and regulations are also required under Section 11 (c) prescribing the records which employers must keep; also under Section 14 with reference to learners, apprentices, messengers, and handicapped persons. Under Section 7 (b) (3) special treatment is accorded industries "found by the Administrator to be of a seasonal nature."

Under Section 3 (m) the Administrator must set up a procedure for the determination of the reasonable cost of board, lodging and other facilities customarily furnished the employee as part of his wages.

Under Section 13 (a) (1) the Administrator must define and delimit the terms, "bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman", to which classes of employees the benefits of the wage and hour sections do not apply.

The Administrator must define the phrase "area of production" for the purpose of applying Sections 7 (c) and 13 (a) (10). These are duties specifically put upon the Administrator, and the performances of which has legal consequences.

Beyond such matters, various questions of interpretations arise which will ultimately be for the courts to decide and as to which the Administrator has no power to make any binding ruling. Yet in the discharge of his administrative duties, the Administrator must often have to call upon the General Counsel for interpretations of the law. Though the Administrator has no power, by issuing such interpretations, to confer upon an employer an immunity from private suits for unpaid minimum wages or overtime compensation and double damages which employees may bring under the provisions of Section 16, nevertheless, since these interpretations have administrative importance, orderly procedure calls for their publication. Therefore, with caution as to the limited reliance that may be put upon them, the Administrator will occasionally issue interpretative bulletins setting forth opinions by the General Counsel rendered to the Administrator on matters of interpretation, provided the conclusions are felt to be sufficiently free from doubt.

As to individual inquiries presenting problems more or less peculiar to the inquirer, and not covered by any general interpretative bulletin, many of these inquiries are susceptible of answer without much difficulty and the Administrator will eventually undertake to answer them, subject to the physical limitations of the size of the staff. The extent to which the Administrator may go in this direction will no doubt be determined largely as a result of accumulating experience in administering the law. It must be made clear, however, that such answers as are given to these individual inquiries are subject to discount, (1) because they are based upon an ex parte

and often meager statement of facts, and (2) are rendered without the benefit of argument by persons who may represent an interest conflicting with that of the inquirer; and the caution cannot be made too emphatic that such answers by the Administrator cannot confer upon an employer immunity from private suit by an employee under Section 16.

It is hoped that the larger part of individual inquiries will be decentralized and directed to our regional offices when established. The Fair Labor Standards Act of 1938 was designed and will be administered as permanent and not temporary legislation. We do not propose to surround it with panic psychology. We propose to go slowly, cautiously, and as surely as we can. We propose to avoid the slightest suggestion of a circus atmosphere. Nobody is on trial for anything. Employers who cooperate with industry committees in submitting vital facts about the operations in their industry will be protected. Committees will be striving only to get a reasonable basis on which to establish a wage order for the cotton, rayon, silk textile industry and subsequently for other industries. These wage orders must be based on facts and reasonableness if they are to stand the test of application, compliance, enforcement and court action.

While this careful work of the industry committee is being carried forward slowly, the basic standards of the Act—not less than 25 cents an hour nor more than 44 hours per week without payment of time and a half for overtime—will hold the line against the continued deterioration of our wage and hour structure.

We are embarking upon a most difficult job. In line with the new economic and social forces at work in this modern world we are attempting to extend the democracy which we have always had in politics to the economic and industrial field, peacefully, by orderly processes and under the rule of reason and our common interests as a Nation.