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WAGE AND HOUR DIVISION
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WAGE-HOUR REGULATIONS ON SEASONAL INDUSTRIES

Administrator Elmer F. Andrews of the Wage and Hour Division, U.S. Department of Labor, today (Friday) issued regulations under which seasonal industries may make application for partial exemption from the hours provisions of the Fair Labor Standards Act.

The exemption, provided for in Section 7 (b) (3) of the law, allows employers to pay their employees at straight-time rates for 12 hours a day or 56 hours a week in industries "found by the Administrator to be of a seasonal nature." For work over 12 hours a day or 56 hours a week compensation at the rate of not less than time and one-half is required.

The regulations defined an industry of seasonal nature as:

"An industry which engages in the handling, extracting, or processing of materials during a season or seasons occurring in regularly, annually recurring part or parts of the year; and ceases production, apart from such work as maintenance, repair, clerical and sales work, in the remainder of the year because of the fact that, owing to climate or other natural conditions, the materials handled, extracted, or processed, in the form in which such materials are handled, extracted, or processed, are not available in the remainder of the year."

Administrator Andrews explained that the regulations were based upon a thorough study of the legislative history of the Act in order to ascertain what Congress meant by "industries of a seasonal nature."

"Congress evidently intended to draw a line", the Administrator declared, "between industries whose supply of raw materials worked on is so affected by climate or other natural conditions that their work can be performed only in certain seasons of the year, and industries which are not so prevented by natural conditions from operating all year round."

"It is the former type of industry which may be thought to be in need of the greater flexibility in hours of employment provided by the exemption.

"The exemption does not apply to an industry which operates all year round even though there may be wide variation in employment during the year; nor does the exemption apply to an industry which operates only in part of the year for reasons unconnected with natural conditions affecting the industry's supply of raw materials.

"The regulations repeat the statute's definition of 'industry' as meaning 'a trade, business, industry, or branch thereof, or group of industries in which individuals are gainfully employed.'

"An industry might have several branches each considered as an 'industry' for the purposes of the seasonal exemption. Conceivably, for example, the canning industry might be considered as composed of two or more branches. What constitutes a trade, business, industry, or branch thereof, or group of industries for purposes of this seasonal exemption will be decided upon the economic facts of each situation presented.

"The regulations provide a procedure for the making of application to the Administrator for the seasonal exemption, and appropriate hearing and finding thereon.

"The procedure is adapted to the handling of the question of seasonal exemptions industry by industry rather than by individual consideration of thousands of separate business establishments. Exemptions when granted will apply in a seasonal industry or seasonal branch of an industry to all individual business units whose operations are seasonal.

"The effect of an exemption for an industry of a seasonal nature will be, in accordance with the provisions of Section 7 of the Act, to allow such industry for a period or periods of not more than 14 workweeks in the aggregate to employ employees 12 hours in any workday and 56 hours in any workweek without payment

of time and one-half, provided that employment in excess of 12 hours in any workday or 56 hours in any workweek is compensated at a rate not less than one and one-half times the regular rate of compensation.

"In order to avoid delay in the granting of exemptions for those industries which are clearly seasonal and which may be immediately in need of an exemption before the end of the calendar year, there is also promulgated a temporary regulation effective until December 31, 1938.

"The temporary regulation grants a blanket temporary exemption for those industries of a seasonal nature which produce 50 percent or more of their output in a period or periods aggregating not more than 14 workweeks.

"The temporary regulation provides that industries not qualifying for temporary exemption because 50 percent or more of their output is not produced within a period or periods aggregating no more than 14 workweeks should make regular application for exemption in accordance with the regulations adopted.

"It is contemplated that industries claiming to be seasonal which do not produce 50 percent or more of their output in a period or periods aggregating not more than 14 workweeks will apply to the Administrator for an exemption in order that it may be determined in each specific case whether the total period of operation is so great a portion of the year as to refute a claim that the industry is of a seasonal nature."
