

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington, D. C.

NOTICE OF REVIEW OF DETERMINATION THAT THE COLD STORAGE OF APPLES IN APPLE STORAGE WAREHOUSES IN THE "APPALACHIAN AREA" IN THE STATES OF PENNSYLVANIA, MARYLAND, VIRGINIA, AND WEST VIRGINIA, IS AN INDUSTRY OF A SEASONAL NATURE PURSUANT TO SECTION 7 (b)(3) OF THE FAIR LABOR STANDARDS ACT OF 1938 AND PART 526 OF THE REGULATIONS ISSUED THEREUNDER.

WHEREAS, upon consideration of applications filed by the Winchester Cold Storage Company, Inc., and sundry other parties for the exemption of the cold storage of apples in apple storage warehouses in the "Appalachian area" in the states of Pennsylvania, Maryland, Virginia, and West Virginia, from the maximum hour provisions of the Fair Labor Standards Act of 1938, as a branch of an industry of a seasonal nature within the meaning of Section 7 (b)(3) and Part 526 of the Regulations issued thereunder, a preliminary determination was made that a prima facie case had been shown for the granting of the aforesaid exemption to the cold storage of apples in apple storage warehouses in the "Appalachian area" and notice thereof was published in the Federal Register under date of October 4, 1939, in accordance with the procedure established by Section 526.5(c) of the said regulations; and

WHEREAS, within fifteen days following the publication of that preliminary determination the Administrator received objection and request for hearing; and

WHEREAS, the Administrator caused to be published in the Federal Register on October 21, 1939 (4 FR 4318) a notice which stated that a public hearing would be held pursuant to Sections 526.5 and 526.6 of the said Regulations in Room 3229, U. S. Department of Labor, 14th Street and Constitution Avenue, Washington, D. C., to commence at 10:00 o'clock A. M. on November 2, 1939, before Harold Stein, an authorized representative of the Administrator, authorized to conduct said hearing, take testimony and hear arguments for the purpose of determining, and to determine the following question:

"Whether the cold storage of apples in apple storage warehouses located in the 'Appalachian area' is an industry of a seasonal nature or a branch thereof within the meaning of Section 7 (b)(3) of the Fair Labor Standards Act of 1938 and Part 526 of the Regulations issued thereunder."

As used in this notice:

The term "cold storage" of apples is used in the commonly accepted meaning and includes the receiving into storage, the maintaining in storage and the moving out of storage of such apples.

The term "apple storage warehouses located in the 'Appalachian area'" is understood to designate all apple storage warehouses located

- (a) between the Allegheny Mountains on the west, the Blue Ridge Mountains on the east, U. S. Route No. 30 on the north, and U. S. Route No. 58 on the south, and
- (b) in the Virginia counties of Albemarle, Nelson, Amherst, Bedford, and Henry.

At this hearing all persons interested, including employees, employee groups, employee labor organizations, employers, employer groups, and trade organizations within the industry affected, and designated sub-

ordinates of the Administrator, were afforded an opportunity to present evidence and to be heard, and

WHEREAS, following said hearing and on the basis thereof the aforementioned Harold Stein duly made findings and determination and on April 10, 1940, filed same with the Administrator in Room 5144, U. S. Department of Labor Building, Washington, D. C., where copies of said findings and determination are available for examination by interested parties, and which contain the following determination:

- "1. Appalachian apples are harvested each year only in the months of September, October, and November, and the great bulk of such apples move promptly into cold storage in local warehouses.
- "2. The apple storage warehouses in the "Appalachian area", as defined below, were constructed as apple storage warehouses and are used for that purpose with only an insubstantial amount of their space being used for other commodities.
- "3. The apple storage warehouses in the Appalachian area, handle about 40 per cent of all American export apples including chiefly certain types of apples produced primarily in this area, perform no work other than the receipt of apples except for the maintenance of the warehouses and the shipment of the stored apples for sale during the balance of the year. Aside from such activities the warehouses cease operation after the close of the receiving season in November.
- "4. The cold storage of apples in apple storage warehouses located in the "Appalachian area" is a branch of an industry and of a seasonal nature within the meaning of Section 7 (b)(3) of the Fair Labor Standards Act of 1938 and Part 526 of Regulations issued thereunder.

"The term 'apple storage warehouses located in the "Appalachian area"' is understood to designate all apple storage warehouses located

- (a) between the Allegheny Mountains on the west, the Blue Ridge Mountains on the east, U. S. Route No. 30 on the north, U. S. Route No. 58 on the south, and

(b) in the Virginia counties of Albemarle, Nelson, Amherst, Bedford and Henry.

"The applications are granted subject to review under Section 526.7 of the Regulations.

"This determination is without prejudice to determinations on applications from other storage warehouses warehousing apples or other fruits and vegetables", and

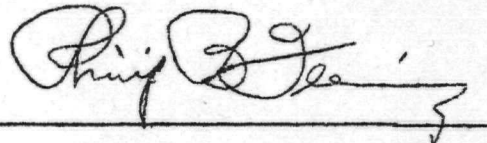
WHEREAS, the Administrator caused to be published in the Federal Register on April 20, 1940 (5 FR 1470) a notice which set forth the aforesaid determination and which stated that pursuant to the provisions of Section 526.7 of the aforesaid Regulations, any person aggrieved by the determination might within fifteen days thereafter 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; and

WHEREAS, the International Longshoreman's and Warehouseman's Union, Local 1-6, has duly filed a petition for review of said determination;

NOW, THEREFORE, the petition is granted and notice is hereby given that the Administrator for the purpose of reviewing the aforesaid determination and to make a final determination in the matter of the applications filed by the Winchester Cold Storage Company, Inc., and sundry other parties for the exemption of the cold storage of apples in apple storage warehouses in the "Appalachian area" in the states of Pennsylvania, Maryland, Virginia, and West Virginia, from the maximum hour provisions of the Fair Labor Standards Act of 1938 as a branch of an industry of a seasonal nature within the meaning of Section 7(b)(3)

and Part 526 of the Regulations issued thereunder, will receive briefs from interested parties either in support of or in opposition to the aforementioned determination provided that briefs are filed with the Administrator of the Wage and Hour Division prior to the close of business June 15, 1940. All briefs should be filed in triplicate and will be available for inspection by interested parties in Room 5144, United States Department of Labor Building, Washington, D. C.

Signed at Washington, D. C., this 21st day of May, 1940.

A handwritten signature in cursive script, appearing to read "Philip B. Fleming", written over a horizontal line.

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

Published in Federal Register, May 23, 1940.