

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

NOTICE OF FINAL DETERMINATION DENYING CERTAIN
APPLICATIONS FOR PARTIAL EXEMPTION OF THE
QUARRYING OF DIMENSION STONE FROM SURFACE OR
OPEN CUTS, AS A SEASONAL INDUSTRY PURSUANT TO
SECTION 7(b)(3) OF THE FAIR LABOR STANDARDS
ACT OF 1938 AND PART 526 AS AMENDED OF REGULA-
TIONS ISSUED THEREUNDER

WHEREAS, applications having been made by the Hall Grindstone Company and sundry other parties under Section 7(b)(3) of the Fair Labor Standards Act of 1938, and Regulations, Part 526, as amended by the Administrator thereunder, for partial exemption of the quarrying of dimension stone from surface or open cuts from the maximum hours provisions of Section 7(a) of said Act pursuant to Section 7(b)(3) applicable to industries found by the Administrator to be of a seasonal nature; and

WHEREAS, a public hearing on said applications was held before Harold Stein, the representative of the Administrator, duly authorized to take testimony, hear argument and determine whether or not the quarrying of dimension stone from surface or open cuts or any sub-division thereof is an industry 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; and

WHEREAS, following such hearing, the said Harold Stein duly made his findings of fact and determined as follows:

- "1. The excavating, hauling, and milling of grit grindstones from surface or open cuts in the Southern Ohio field, if considered as a single industry or branch of an industry, does not cease operation during the year, and, therefore, is not an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of Regulations issued thereunder; and
- "2. The excavating, or the excavating and hauling of grit grindstones from surface or open cuts in the Southern Ohio field takes place during a period too long in relation to the period of exemption afforded by Section 7(b)(3) of the Fair Labor Standards Act, to justify a finding that such operations, even if they constitute an industry or branch thereof, are of a seasonal

nature, and, therefore, do not constitute an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of the Regulations issued thereunder; and

- "3. The quarrying and milling of slate in the Vermont-New York zone is admittedly not of a seasonal nature within the meaning of Regulations, Part 526; and
- "4. The record is inconclusive on the existence or extent of any other branches, whether of a seasonal nature or not, of the dimension stone industry for which applications were filed.

"The applications of the Hall Grindstone Company and the Vermont-New York Slate Industry are denied.

"All other applications from employers in the dimension stone industry are denied without prejudice"; and

WHEREAS, said Findings and Determination were duly filed with the Administrator on January 17, 1940, 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 January 23, 1940, the Administrator caused to be published in the Federal Register (5 FR 264) 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 fifteen days after January 23, 1940, 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, a petition for review, a copy of which is on file in Room 5144, Department of Labor Building, Washington, D. C., and there available for examination by all interested parties, was duly filed by the Hall Grindstone Company; and

WHEREAS, the Administrator caused to be published in the Federal Register on February 27, 1940 (5 FR 800) a notice granting the petition for review which stated that the Administrator, for the purpose of reviewing the aforementioned Findings and Determination, and to make a final determination of the questions set forth in the second paragraph of the notice, would receive briefs from interested parties either in support of or in opposition to the aforementioned Findings and Determination; and

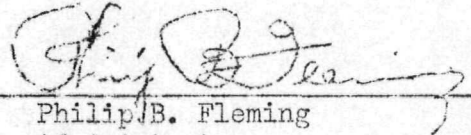
WHEREAS, the Administrator has reviewed the record made before the presiding officer, his findings of fact and determination, and briefs

and letters received from interested persons; and

WHEREAS, I, Philip B. Fleming, Administrator, have found that the aforesaid Findings of Fact and Determination of the presiding officer are correct.

NOW, THEREFORE, Notice is hereby given that the decision of the presiding officer denying the application of the petitioner is affirmed.

Signed at Washington, D. C., this 25th day of July, 1940.



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

Published in Federal Register, August 6, 1940.