

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

IN THE MATTER OF THE DETERMINATION THAT TIMBER OPERATIONS INVOLVING LODGEPOLE PINE, ENGELMANN SPRUCE, AND COMMONLY ASSOCIATED SPECIES OF TIMBER IN THE STATES OF COLORADO, WYOMING AND UTAH COMPRISE AN INDUSTRY OF A SEASONAL NATURE PURSUANT TO SECTION 7(b)(3) OF THE ACT AND PART 526 AS AMENDED OF THE REGULATIONS ISSUED THEREUNDER.

WHEREAS, an application was filed by the Rocky Mountain Timber Producers Association for exemption from the maximum hours provisions of the Fair Labor Standards Act of 1938 of timber operations, involving Lodgepole Pine, Engelmann Spruce, and commonly associated species of timber in the States of Colorado, Wyoming, Utah and Idaho, as an industry of a seasonal nature pursuant to Section 7(b)(3) of the Act and Part 526 as amended of the regulations issued thereunder; and

WHEREAS, the Administrator of the Wage and Hour Division gave notice of a public hearing to be held at the Albany Hotel, Denver, Colorado, on May 14, 1940, before Mr. Burton D. Seeley, who was authorized to take testimony, hear argument and determine:

Whether timber operations involving Lodgepole Pine, Engelmann Spruce, and commonly associated species of timber in the States of Colorado, Wyoming, Utah, and Idaho, as defined herein, or any subdivision thereof, is an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 as amended of the regulations issued thereunder.

The term "timber operations, involving Lodgepole Pine, Engelmann Spruce, and commonly associated species of timber" was stated to mean the logging and reduction to usable form in the woods of Lodgepole Pine, Engelmann Spruce, and commonly associated species of timber in the afore-mentioned states, and might include the hauling of the logs from the woods to the sawmill and the delivery of the logs or rough manufactured products to local markets or shipping points. It was not to include the treating or further processing of such logs or rough manufactured products; and

WHEREAS, following such hearing, the said Burton D. Seeley

duly made his findings of fact and determined as follows:

- "1. Timber operations involving Lodgepole Pine and Engelmann Spruce and commonly associated species of timber, as defined in the notice of hearing, are carried on at altitudes generally ranging from 8500 to between 11,000 and 12,000 feet in the States of Colorado, Wyoming and Utah; and
- "2. Timber operations involving Lodgepole Pine, Engelmann Spruce, and commonly associated species of timber as herein used, includes the logging and reducing to usable form in the woods of Lodgepole Pine, Engelmann Spruce, and commonly associated species of timber in the afore-mentioned states, and also includes the hauling of the logs from the woods to the sawmill, or the delivery of the logs or rough manufactured products from the woods to local markets or shipping points. The treating and further processing of such logs or rough manufactured products is not included; and
- "3. The altitudes at which operations on the above timber types are carried on in these states average higher than operations on any other timber type; and
- "4. Engelmann Spruce, Lodgepole Pine, and commonly associated species of timber are fringed at the lower extremities by Ponderosa and other Western Pines and commonly associated species, but operations on the fringing timber types are not normally carried on as a part of the former operations; and
- "5. The timber operations in Lodgepole Pine and Engelmann Spruce and commonly associated species of timber in the States of Colorado, Wyoming, and Utah, as above defined, is a branch of the lumber industry; and
- "6. Timber operations involving Lodgepole Pine, Engelmann Spruce, and commonly associated species of timber in the States of Colorado, Wyoming, and Utah are conducted during a season of from six to seven months elapsed time or four to five months full time. Substantially all production takes place with a six month period occurring in a regularly annually recurring part of the year. Such operations cease entirely for about six months during the remainder of the year because of the fact that heavy snows, spring breakup, precipitous terrain, and low temperatures render such timber unavailable because of inaccessibility and danger to both men and animals; and

"7. In the States of Colorado, Wyoming, and Utah, timber operations involving Lodgepole Pine, Engelmann Spruce and commonly associated species of timber, as defined above, is a branch of an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 as amended of the regulations issued thereunder.

"The exemption is granted timber operations involving Lodgepole Pine, Engelmann Spruce, and commonly associated species of timber as defined above in the States of Colorado, Wyoming, and Utah.

"Insufficient information is furnished from the record to allow any determination on timber operations involving Lodgepole Pine, Engelmann Spruce, and commonly associated species of timber in the State of Idaho.

"This determination was made without prejudice to a determination on operations on other timber types or operations on the same timber types in other states"; and

WHEREAS, said Findings and Determination were duly filed with the Administrator on July 20, 1940, and are on file in Room 5144, Department of Labor Building, Washington, D. C., and available for examination by all interested parties; and

WHEREAS, on August 2, 1940, the Administrator caused to be published in the Federal Register (5 F.R. 2724) 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 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, petitions for review were filed on behalf of the Colorado State Federation of Labor and on behalf of The Hallack & Howard Lumber Company; and

WHEREAS, the petition on behalf of the Colorado State Federation of Labor was withdrawn; and


WHEREAS, the petition on behalf of The Hallack & Howard Lumber Company is hereby denied on the ground that said Findings and Determination do not affect, but expressly except the operations of the petitioner in the State of Idaho, without prejudice, however, to a determination on the operations of the said petitioner on the same or other timber types in the State of Idaho; and

WHEREAS, no other petition for review has been filed within the said fifteen days,

NOW, THEREFORE, pursuant to the provisions of Section 526.7 of the said Regulations, the exemption provided by Section 7(b)(3) of the Fair Labor Standards Act of 1938 will become effective on the date this notice

appears in the Federal Register. The said exemption is applicable only as specified by the aforesaid Findings and Determination.

Signed at Washington, D. C. this 27th day of September, 1940.



Administrator
Wage and Hour Division
U. S. Department of Labor

Published in Federal Register, October 4, 1940.