

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

TITLE 29 -- LABOR  
CHAPTER V -- WAGE AND HOUR DIVISION

PART 526 -- REGULATIONS APPLICABLE TO INDUSTRIES  
OF A SEASONAL NATURE ISSUED PURSUANT  
TO SECTION 7(b)(3) OF THE FAIR LABOR  
STANDARDS ACT

IN THE MATTER OF THE DETERMINATION THAT  
THE PACKING OF UNSHELLED, PAPER-SHELLED  
OR IMPROVED VARIETIES OF PECANS IS AN  
INDUSTRY OF A SEASONAL NATURE PURSUANT  
TO SECTION 7(b)(3) OF THE FAIR LABOR  
STANDARDS ACT AND PART 526 AS AMENDED  
OF THE REGULATIONS ISSUED THEREUNDER\*

WHEREAS, an application was filed by the National Pecan Growers Exchange covering the territory of Georgia, Florida, Alabama, Mississippi, and parts of Louisiana, for exemption from the maximum hours provision of the Fair Labor Standards Act of 1938 of packing operations involving the paper-shelled pecan and improved varieties, 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, applications were filed by the J. R. Fleming Company of Weatherford, Texas, and the Clarksville Pecan Shelling Company of Clarksville, Texas, for exemption from the maximum hours of the Fair Labor Standards Act of 1938 of the shelling of seedling pecans in Texas 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 Willard Hotel, Washington, D. C., on September 16, 1940, before Harold Stein, Presiding Officer, who was authorized to take testimony, hear argument, and determine:

Whether the hauling, packing, shelling, or other processing or storing of paper-shelled and seedling pecans, from the overtime provisions of the Fair Labor Standards Act 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; and

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

1. The packing of unshelled paper-shell or improved varieties of pecans is conducted in establishments specifically designed for this purpose.

\*This affects tabulation contained in Section 526.101, Code of Federal Regulations.  
(6795)

2. The packing of unshelled paper-shell or improved varieties of pecans is a separable branch of the pecan industry.
3. In excess of 50 percent of the annual volume of paper-shell or improved varieties of pecans are received for packing unshelled, i.e., in the raw and natural state in a period amounting in the aggregate to not more than 14 workweeks.
4. The packing of unshelled paper-shell or improved varieties of pecans is an industry of a seasonal nature pursuant to Section 7(b)(3) of the Fair Labor Standards Act and Part 526 of the Regulations issued thereunder.
5. The shelling of seedling pecans in Texas 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 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.

The packing of unshelled paper-shell or improved varieties of pecans is granted exemption. ✓

Exemption is denied the shelling of seedling pecans in Texas.

Because the record is inconclusive thereon, no finding is possible on the shelling of pecans other than seedling pecans in Texas or on the storage of pecans; and

WHEREAS, said Findings and Determination were duly filed with the Administrator on November 15, 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 November 19, 1940, the Administrator caused to be published in the Federal Register (5 F.R. 4549) 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 15 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 J. R. Fleming and Company, the Black Brothers Company, the Southern Pecan Shelling Company, and the R. E. Funsten Company; and

WHEREAS, the issues raised by the said petitions have been carefully considered by the Administrator; and

WHEREAS, no other petition for review has been filed within the said 15 days; and

WHEREAS, said Findings and Determination are found to be in accordance with the testimony and briefs submitted at said hearing,

NOW, THEREFORE, pursuant to the provisions of Section 526 of the said Regulations as amended,

1. The petitions for review on behalf of the J. R. Fleming and Company, the Black Brothers Company, the Southern Pecan Shelling Company, and the R. E. Funsten Company are hereby denied.
2. 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 19th day of December, 1940.



Administrator  
Wage and Hour Division  
Department of Labor

Published in Federal Register December 21, 1940.

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