

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

ADMINISTRATOR'S DECISION

FINDING CERTAIN BRANCHES OF THE LUMBER INDUSTRY OF A SEASONAL NATURE WITHIN THE MEANING OF SECTION 7(b)(3) OF THE FAIR LABOR STANDARDS ACT OF 1938 AND REGULATIONS, PART 526, ISSUED THEREUNDER

WHEREAS, the Northeastern Lumber Manufacturers Association, Inc., the American Pulpwood Association, the Timber Producers Association of Minnesota, and sundry other parties have filed applications for exemption, pursuant to Section 526.4 of the Regulations Applicable to Industries of a Seasonal Nature, of certain subdivisions of the lumber industry from the maximum hours provision of the Fair Labor Standards Act of 1938 as branches of an industry of a seasonal nature pursuant to Section 7(b)(3) of the Act; and

WHEREAS, after a public hearing on the applications held in Washington, D. C., on January 16, 1939, the Presiding Officer determined that the applications should be denied upon the basis of the record made at the hearing; and

WHEREAS, petitions were filed by the applicants pursuant to Section 526.7 of the said Regulations for review of the Presiding Officer's determination; and

WHEREAS, upon due examination and consideration of the applications for exemption, the record of the proceedings, the findings of the Presiding Officer, and the petitions for review, it was found desirable to set a hearing pursuant to Section 526.5 of the Regulations for the purpose of taking evidence on the questions raised by the applications for exemption in lieu of reviewing the determination under the provisions of Section 526.7 of the Regulations; and

WHEREAS, a public hearing was held before Administrator Elmer F. Andrews in Washington, D. C. on April 17 and 18, 1939 for the purpose of taking testimony on the questions specified by the Notice of Hearing, dated March 31, 1939 as follows:

"(1) Whether the northern section of the lumber industry, as defined herein, 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 the Regulations issued thereunder.

"(2) Whether the cutting, peeling, hauling, driving and auxiliary operations involved in the production of sap peeled pulpwood are of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of the Regulations, and whether such operations can be classified as an industry or a separate branch of an industry within the meaning of Sections 7(b)(3) and 3(h) of the Act and Part 526 of the Regulations.

"(3) Whether there are any other divisions of the northern section of the lumber industry which are of a seasonal nature and can be classified as industries or separate branches of an industry within the meaning of Sections 7(b)(3) and 3(h) of the Act and Part 526 of the Regulations.

"The 'northern section of the lumber industry,' as used in this notice, means the operations of logging and sawmilling, together with auxiliary operations, which are conducted in the States of Maine, Michigan, Minnesota, New Hampshire, New York, Pennsylvania, Vermont and Wisconsin. In the case of sap peeled pulpwood production, the geographical area to be considered at the hearing will include, in addition to these States, Kentucky, Maryland, North Carolina, Ohio, Tennessee, Virginia and Washington."; and

WHEREAS, upon due examination and consideration of the record of the proceedings held on April 17 and 18, 1939, before the Administrator, it is found that:

(1) The sap peeling of pulpwood can be performed only during the months of the year when the sap is running; and

(2) The sap peeling of pulpwood means the felling, trimming, and peeling of pulpwood trees while the sap is running, and includes the operations of bucking and piling if performed during the sap peeling season; and

(3) The typical period during which sap peeling operations can be performed extends from the beginning of May through the end of August; and

(4) The operation of sap peeling of pulpwood must cease at the time when the sap no longer runs in the pulpwood trees; and

(5) The sap peeling of pulpwood is a separable branch of the lumber industry within the meaning of Section 3(h) of the Fair Labor Standards Act of 1938; and

WHEREAS, it has been further found that:

(1) The hauling on ice and snow roads of sawtimber and pulpwood in the States of Maine, Massachusetts, New Hampshire, Pennsylvania, Vermont, Michigan, Minnesota, Wisconsin and New York can be performed only during the months of the year when ice and snow roads can be utilized for the transportation of sawtimber and pulpwood and must cease at the beginning of the spring thaw; and

(2) The spring freshet driving of sawtimber and pulpwood in the States of Maine, New Hampshire, New York and Vermont can be performed only during the months succeeding the spring breakup and while the rivers and streams in these States are in flood stage; and

(3) Ice and snow road hauling and spring freshet driving in the States enumerated in the preceding paragraphs constitute separable branches of the lumber industry within the meaning of Section 3(h) of the Fair Labor Standards Act of 1938; and

WHEREAS, it has been further found that:

(1) The evidence in the record does not show that any cessation of sawtimber logging in the northeast which occurs is due of necessity to climatic or other natural conditions; and

(2) Although there may be individual sawmills in the northeast which conduct their operations within a specified time period, the evidence in the record does not show that the sawmilling industry in the northeast, or any branch thereof, ceases production because of climatic or other natural conditions.

NOW, THEREFORE, notice is hereby given, that the Administrator has found, pursuant to Section 526.6(e) of the Regulations upon the basis of the record made at the hearings, that:

(1) The pulpwood sap peeling branch of the lumber industry wherever conducted is an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Fair Labor Standards Act of 1938 and Regulations issued thereunder and, therefore, is entitled to the exemption provided in Section 7(b)(3) of the said Act.

(2) The ice and snow road hauling branch of the lumber industry as defined in this notice of decision (in the states of Maine, Massachusetts, New Hampshire, Pennsylvania, Vermont, Michigan, Minnesota, Wisconsin and New York) is an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Fair Labor Standards Act of 1938 and Regulations issued thereunder and, therefore, is entitled to the exemption provided in Section 7(b)(3) of the said Act.

(3) The spring freshet driving branch of the lumber industry as defined in this notice of decision (in the states of Maine, New Hampshire, New York and Vermont) is an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Fair Labor Standards Act of 1938 and Regulations issued thereunder and, therefore, is entitled to the exemption provided in Section 7(b)(3) of the said Act.

(4) The applications for exemption of other subdivisions of the lumber industry are not sustained by the evidence introduced at the hearings and are, therefore, denied.

Signed at Washington, D. C., this 10th day of May, 1939.



Elmer F. Andrews, Administrator
Wage and Hour Division
Department of Labor