

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

IN THE MATTER OF DETERMINATION THAT THE NORTHERN BRANCH OF THE SAND AND GRAVEL INDUSTRY IS, AND THE SOUTHERN BRANCH OF THAT INDUSTRY IS NOT, AN INDUSTRY OF A SEASONAL NATURE PURSUANT TO SECTION 7(b)(3) OF THE FAIR LABOR STANDARDS ACT OF 1938 AND PART 526 AS AMENDED OF REGULATIONS ISSUED THEREUNDER

WHEREAS, applications have been made by the National Sand and Gravel Association and sundry other parties, under Section 7(b)(3) of the Fair Labor Standards Act of 1938, and Regulations, Part 526, as amended (Regulations applicable to Industries of a Seasonal Nature), issued by the Administrator thereunder, for partial exemption of the sand and gravel industry 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 sand and gravel industry 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. There is a branch of the sand and gravel industry (as defined herein) wherein the plants normally shut down

for about six months each year, except for an insubstantial amount of production that may be produced shortly before or shortly after the main production season. This branch is located in the colder and, in general, more northerly parts of the United States; and

2. There is a southern branch of the industry wherein the plants do not shut down at all or do not normally shut down for a substantial period each year; and
3. The plants in the northern branch cease operation annually at a regularly recurring season of the year, except for sales, maintenance, and similar work, because the materials used by the industry are not available for excavation, handling and processing in the form in which they must be excavated, handled and processed, i.e., as unfrozen sand and gravel, because of climatic factors; and
4. The northern branch of the sand and gravel industry is 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
5. The southern branch of the sand and gravel industry is not an industry of a seasonal nature within the meaning of the Act and the Regulations; and
6. For the purpose of this Determination the sand and gravel industry shall mean the excavation of sand and gravel, but not industrial sand, from open cuts, including necessary milling operations incident thereto; and

7. For the purpose of this Determination the northern branch of the sand and gravel industry shall include all plants located in counties that lie within the isothermic belt below 25 degrees Fahrenheit or are touched by the 25 degree isotherm on Figure 5 of the American Atlas of Agriculture issued by the United States Department of Agriculture. The said counties are listed in Appendix A attached hereto and incorporated herewith by reference.
8. This determination shall be without prejudice to a supplementary determination enlarging the scope of the Northern branch by the inclusion therein of such plants or groups of plants, if any, as operate in the same manner and for the same reasons as the plants in the Northern branch described in paragraphs 1 and 3 above.

WHEREAS, said Findings and Determination were duly filed with the Administrator on January 8, 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 16, 1940, the Administrator caused to be published in the Federal Register (5FR 199) 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 16, 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, no 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 finding and determination.

Signed at Washington, D. C., this 8 day of March 1940.



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Philip B. Fleming  
Colonel, Corps of Engineers  
Administrator  
Wage and Hour Division  
U.S. Department of Labor

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APPENDIX A

A. All counties in the States of:

Iowa	South Dakota
Maine	Utah
Minnesota	Vermont
Montana	Wisconsin, and
New Hampshire	Wyoming
North Dakota	

B. All counties in the State of Colorado except the counties of:

Adams	Lincoln
Arapahoe	Logan
Baca	Morgan
Bent	Otero
Cheyenne	Phillips
Crowley	Prowers
Denver	Pueblo
Douglas	Sedgwick
Elbert	Washington
Kiowa	Weld, and
Kit Carson	Yuma

All the counties in the State of Connecticut except the counties of:

Middlesex	Tolland, and
New London	Windham

All the counties in the State of Idaho except the counties of:

Ada	Lincoln
Benewah	Minidoka
Canyon	Nez Perce
Gooding	Owyhee
Jerome	Payette, and
Latah	Twin Falls
Lewis	

All the counties in the State of Michigan except the counties of:

Berrian and	Monroe
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All the counties in the State of Nebraska except the counties of:

Adams	Harlan
Banner	Hayes
Buffalo	Hitchcock
Chase	Jefferson
Cheyenne	Kearney
Clay	Kimball
Dawson	Nuckolls
Deuel	Pawnee
Dundy	Perkins
Franklin	Phelps
Frontier	Redwillow
Furnas	Richardson
Gosper	Thayer, and
Hall	Webster

All the counties in the State of New York except the counties of:

Genesee	Seneca
Monroe	Suffolk
Nassau	Wayne
Niagara	Westchester, and
Orleans	all the counties of the
Rockland	City of New York

C. The following counties in the following States:

State of Illinois

Boone	Lee
Bureau	McHenry
Carroll	Marshall
Cook	Mercer
DeKalb	Ogle
DuPage	Peoria
Henderson	Putnam
Henry	Rock Island
Jo Daviess	Stark
Kane	Stephenson
Kendall	Warren
Knox	Whiteside
Lake	Will, and
La Salle	Winnebago

State of Indiana:

Allen	Marshall
DeKalb	Noble
Elkhart	Saint Joseph
Kosciusko	Steuben, and
Lagrange	Whitley

State of Massachusetts:

Berkshire  
Franklin  
Hampden

Hampshire  
Middlesex, and  
Worcester

State of Missouri:

Archison  
Gentry  
Harrison  
Holt  
Mercer  
Nodaway

Putnam  
Schuyler  
Scotland  
Sullivan, and  
Worth

State of Nevada:

Elko  
Eureka, and  
White Pine

State of New Mexico:

Colfax  
Nora  
Rio Arriba

Santa Fe, and  
Taos

State of Ohio:

Williams

State of Oregon:

Baker  
Clackamas  
Deschutes  
Grant  
Hood River  
Jefferson

Lane  
Linn  
Marion  
Umatilla  
Union, and  
Wasco

State of Pennsylvania:

Bradford  
Eric  
Lackawanna  
McKean  
Pike  
Potter

Susquehanna  
Tioga  
Warren  
Wayne, and  
Wyoming

State of Washington:

Cholan  
Ferry  
King  
Kittitas  
Lewis  
Okanogan  
Pend Oreille  
Pierce

Skagit  
Skamania  
Snohomish  
Spokane  
Stevens  
Whatcom, and  
Yakima