

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

EXTENSION OF SEASONAL EXEMPTION FOR NORTHERN BRANCH OF SAND AND GRAVEL
INDUSTRY PROPOSED IN FIRST SUPPLEMENTARY DETERMINATION

In the first supplementary determination made by the Wage and Hour Division of the U. S. Department of Labor, where provision for such action had been made in the original finding, Col. Philip B. Fleming, Administrator, today indicated that a prima facie case existed for extending the seasonal exemption for the northern branch of the sand and gravel industry. (Federal Register, April 26, 1940).

His action was taken on the application of the National Sand and Gravel Association in behalf of the Portland Sand and Gravel Company, of Portland, Pennsylvania.

The original partial exemption from the maximum hours provisions of the Fair Labor Standards Act was made final on March 15, 1940 when Colonel Fleming approved the recommendation by Harold Stein, Assistant Director of the Hearings Branch, in a determination that held the northern branch of the sand and gravel industry was an industry of a seasonal nature. In that document it was stated:

"This determination shall be without prejudice to a supplementary determination enlarging the scope of the northern branch by inclusion therein 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."

In making the original determination, Mr. Stein held that the boundary between the northern and southern branches follows the isothermic belt marking that part of the United States in which the average temperature in December, January and February is below 25° F. The northern branch was held to include all plants located in counties from Maine to the State of Washington that lie north of such a line as shown on Figure 5 of the Atlas of American Agriculture, issued

by the U. S. Department of Agriculture. The Southern branch was held not to be an industry of a seasonal nature.

Northern branch plants, according to testimony adduced at public hearings and supplementary data filed with the Division, were forced to shut down substantially for about six months each year and completely for about five months each year because climatic factors made unfrozen sand and gravel unavailable.

The National Sand and Gravel Association, one of the organizations making application for the original determination, later asked for the supplementary determination enlarging the scope of the northern branch to include the dredging and excavating of sand and gravel by the Portland Sand and Gravel Company in Northampton County, Pennsylvania.

Under the supplementary determination, employers would be permitted to work their employees up to 12 hours a day or 56 hours a week without payment of overtime. The proposed exemption under the extension does not in any way affect the requirement to pay the statutory minimum of 30 cents an hour or the child labor provisions of the Fair Labor Standards Act.

A fifteen-day period during which objectors may be heard will elapse before the supplementary determination can be made final by the Administrator.

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