

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

TWENTY INDUSTRIAL OPERATIONS FOUND TO BE  
SEASONAL BY WAGE-HOUR ADMINISTRATION

Granted Relaxation of Hour Limitations Because of Effect  
of Climatic Conditions on Availability of Raw Materials

Twenty industrial operations, including tobacco operations, open-cut mining, and hybrid seed processing, have been found to be "seasonal" by the Administrator of the Wage and Hour Division, U. S. Department of Labor, because of climatic conditions limiting the time in which raw materials are available.

Seasonal industries may continue to work their employees 12 hours a day or 56 hours in any one workweek for 14 weeks in a calendar year before payment of at least time and one-half their regular rate of pay begins.

Formal applications for seasonal exemptions have been made by employer groups of 24 industries. Four of these applications were denied by the Administrator after hearings. A great number of informal applications, most of them from individual employers, have been handled by informal notification of the inapplicability of the seasonal finding to the industry in question, in addition to the formal procedures for applications as set forth by the regulations. This procedure has saved the Administrator a great deal of time and has also afforded an opportunity to inform interested parties concerning the significance of the seasonal provision in the Act more promptly and in a more adequate manner than would have been practical under a system of formal denials. In the majority of instances, applicants have not pressed their applications after the letters of explanation have been received.

The Act provides that exemptions from the maximum hours provisions may be granted "for a period of 14 weeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature, and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed."

Regulations laid down by the Administrator as a guide in finding which industries are seasonal, provide that "the exemption for an industry of a seasonal nature is applicable to an industry which both engages in handling, extracting, or processing of materials during a season or seasons occurring in a regularly, annually recurring part or parts of the year; and ceases production, apart from such work as maintenance, repair, clerical and sales work in the remainder of the year because of the fact that owing to climate or other natural conditions, the materials handled, extracted, or processed, in the form in which such materials are handled, extracted, or processed are not available in the remainder of the year."

Of the 20 industrial operations which have been found to be seasonal, final determinations of this seasonal nature have been made in 18 cases, and these are now operating under the hours exemption provided for such operations.

They are buying, handling, stemming and redrying of green leaf tobacco; tobacco warehousing; natural ice harvesting and packing; the pulpwood sap peeling branch of the lumber industry; the ice and snow road hauling of lumber in Northeastern and Lake States; raw fur receiving; buying, stripping, sizing, and packing of cigar leaf tobacco; open-cut mining of placer gold in Alaska and certain Western States; open-cut mining of sand and gravel in Northern States;

spring freshet driving of lumber in the Northeastern and Lake States (Later extended to other sections on another application); manufacture of brick in Maine, New Hampshire and Vermont; processing of hybrid seed corn; cane sugar processing and milling in Louisiana; harvesting, preparing and processing of undried evergreens, and the processing of evergreen trees into Christmas trees; curing and packing of Virginia-Smithfield cured meats; cleaning and processing of Redtop seed; cleaning, bagging, and handling in cleaning plants of sugar beet seed; cleaning and preparing of garden seed and seed corn.

Objection was received to the prima facie finding by the Administrator that placer tin operations in Alaska are seasonal, and further investigation is being made. Seasonal exemption for cold storage of apples in the "Appalachian area" has been proposed following a hearing on application for such exemption, and objection has been received to the granting of such exemption. Further investigation is being made with respect to granting that exemption also.

The four industries in which applications for seasonal exemptions have been denied are open-cut mining of bentonite, open-cut mining of dimension stone, Western pine lumber and English walnut and filbert packing.

The decision of the Administrator in three of these industries became final when no petitions for review were received within 15 days of publication in the Federal Register. These industries were open-cut mining of bentonite, the packing of English walnuts and filberts, and Western pine lumber.

The Administrator is now reviewing objections to the finding after hearing, in which seasonal exemption was denied to open-cut mining of dimension stone.

After application for seasonal exemption by any employer or employer groups, and upon consideration of the facts and reasons stated in the application, the Administrator may, without further proceedings, deny the application on the ground that it fails to allege facts entitling the industry to an exemption as a seasonal industry; or, upon consideration of the facts and reasons stated in the application and upon such further investigation as may appear appropriate, the Administrator may set the application for hearing before the Administrator or his authorized representative; or, may notify the applicant of and publish in the Federal Register and by general press release, a preliminary determination that a prima facie case for the granting of an exemption has been shown.

In the event that the Administrator determines that a prima facie case for the granting of an exemption has been shown, the Administrator for 15 days following the publication of his preliminary determination will receive objection to the granting of the exemption and request for hearing from any person interested, including but not limited to, employees, employee groups, and employee labor organizations, within the industry claimed to be exempt,

If no objection and request for hearing is received within 15 days, the Administrator will make a finding upon the prima facie case. The exemption shall become effective upon publication of the finding in the Federal Register.

Upon receipt of objection and request for hearing, the Administrator will set the application for hearing before the Administrator or an authorized representative.

Where hearing is had before an authorized representative of the Administrator, any person aggrieved by the finding of such representative may within 15 days after the action of such representative file a petition with the Administrator requesting a review by the Administrator of the action of the representative upon the record of hearing before the representative. If the request for review is granted, all interested parties will be afforded an opportunity to be heard either in support of, or in opposition to, the matters prayed for in the petition.

If no such petition for review is filed within 15 days, or if such petition is denied by the Administrator, the finding of the authorized representative shall become final.

If a petition for review is granted and upon hearing, the Administrator confirms a finding by the representative that the industry is of a seasonal nature, the exemption shall become effective upon publication of the finding in the Federal Register.

If the Administrator, rejecting a finding by the representative to the contrary, finds on the record that the industry is of a seasonal nature, the exemption shall become effective upon publication of the Administrator's finding in the Federal Register.

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