

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

SUPPLEMENTARY DETERMINATION NO. 1,
IN THE MATTER OF APPLICATION FOR
THE EXEMPTION OF THE DREDGING AND
EXCAVATING OF SAND AND GRAVEL FROM
SURFACE OR OPEN CUTS FROM THE
MAXIMUM HOURS PROVISIONS OF THE
FAIR LABOR STANDARDS ACT OF 1938,
PURSUANT TO SECTION 7(b)(3), PART
526, AS AMENDED, OF THE REGULATIONS
ISSUED THEREUNDER AND PARAGRAPH (8)
OF THE ORIGINAL DETERMINATION MADE
IN THE MATTER OF THE SAND AND GRAVEL
INDUSTRY PURSUANT TO HEARING HELD
JUNE 19, 1939.

WHEREAS, the Administrator determined after a public hearing
held before Harold Stein, Presiding Officer, on June 19, 1939 that:

1. That is a branch of the sand and gravel industry 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
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

WHEREAS, Paragraph (8) of the above Determination provided that it should be without prejudice to a supplementary determination enlarging the scope of the Northern branch by the inclusion therein of such plants or group 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; and

WHEREAS, the National Sand and Gravel Association filed an application with the Wage and Hour Division, United States Department of Labor, on behalf of the Portland Sand and Gravel Company of Portland, Pennsylvania, pursuant to Paragraph (8) of the above cited original determination in the matter of the sand and gravel industry, for a supplementary determination enlarging the scope of the Northern branch of the sand and gravel industry to include the dredging and excavating of sand and gravel by the Portland Sand and Gravel Company of Portland, Northampton County, Pennsylvania; and

WHEREAS, it appeared from the application filed by the National Sand and Gravel Association on behalf of the Portland Sand and Gravel Company of Portland, Pennsylvania, that the sand and gravel plant of the aforesaid company in Northampton County, Pennsylvania, operates in the same manner and for the same reason as the plants in the Northern branch described in paragraphs 1 and 3 of the original determination; and

WHEREAS, the Administrator caused to be published in the Federal Register on April 26, 1940, (5 F. R. 1564), a notice setting

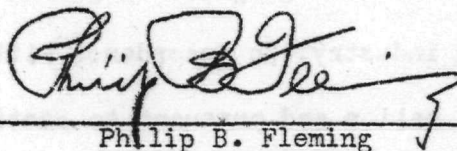
forth the above matters which stated that, upon consideration of the facts stated in the said application for supplementary determination, the Administrator determined, pursuant to Section 526.5(b)(ii), as amended, of the Regulations, that a prima facie case had been shown for enlarging the scope of the Northern branch of the sand and gravel industry, in accordance with Paragraph (8) of the original determination and pursuant to Section 7 (b)(3) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the Regulations issued thereunder to include the sand and gravel plant of the Portland Sand and Gravel Company in Northampton County, Pennsylvania, and which notice stated further that, if no objection and request for hearing was received within fifteen days, the Administrator would make a finding upon the prima facie case shown on the application; and

WHEREAS, no objection and request for hearing was received by the Administrator within the fifteen days following the publication of said notice;

NOW, THEREFORE, pursuant to Section 526.5(b)(ii), of the Regulations, as amended, the Administrator hereby finds, upon the prima facie case shown in the said application, that the sand and gravel plant of the Portland Sand and Gravel Company in Northampton County, Pennsylvania, should be and it is hereby included within the Northern branch of the sand and gravel industry, in accordance with Paragraph (8) of the original determination and pursuant to Section 7(b)(3) of the

Fair Labor Standards Act of 1938 and Part 526, as amended, of the Regulations issued thereunder.

Signed at Washington, D. C. this 29th day of May, 1940.



Philip B. Fleming
Administrator

Published in Federal Register, June 4, 1940.