

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

IN THE MATTER OF DETERMINATION THAT THE
NORTHERN BRANCH OF THE CRUSHED STONE
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 Crushed Stone 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 crushed stone 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 crushed stone 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 crushed stone 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 ledges, and banks of blasted rock, because of climatic factors; and
4. The northern branch of the crushed stone 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 crushed stone 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 crushed stone industry shall mean the blasting and excavating of stone for crushing from surface or open cuts, the transportation, handling, and crushing of such stone, and the sizing, washing, and grading of crushed stone, together with other necessary processing incidental thereto.
7. For the purpose of this Determination the northern branch of the crushed stone 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 May 27, 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 June 11, 1940, the Administrator caused to be published in the Federal Register (6 F.R. 2184) 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 June 11, 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 aforesaid 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 Findings and Determination.

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



Philip R. Fleming, Administrator
Wage and Hour Division
Department of Labor

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 the counties in the State of Colorado except the counties of:

Adams	Lincoln
Arapahoe	Logan
Baca	Morgan
Bent	Otero
Cheyenne	Phillips
Crowley	Powers
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	Franklin	Kearney
Banner	Frontier	Kimball
Buffalo	Furnas	Nuckolls
Chase	Gosper	Pawnee
Cheyenne	Hall	Perkins
Clay	Harlan	Phelps
Dawson	Hayes	Redwillow
Deuel	Hitchcock	Richardson
Dundy	Jefferson	Thayer, and
		Webster

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

Genesee	Orleans	Wayne
Monroe	Rockland	Westchester, and
Nassau	Seneca	all the counties
Niagara	Suffolk	of the City of N.Y. # # #

C. The following counties in the following States:

State of Illinois:

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

State of Indiana:

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

State of Massachusetts:

Berkshire	Hampden	Middlesex,
Franklin	Hampshire	and
		Worcester

State of Missouri:

Atchison	Mercer	Scotland
Centry	Nodaway	Sullivan, and
Harrison	Putnam	Worth
Holt	Schuyler	

State of Nevada:

Elko	Eureka, and	White Pine
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State of New Mexico:

Colfax	Rio Arriba
Nora	Sante Fe, and
	Taos

State of Ohio:

Williams

State of Oregon:

Baker	Hood River	Marion
Clackamas	Jefferson	Umatilla
Deschutes	Lane	Union, and
Grant	Linn	Wasco

State of Pennsylvania:

Bradford	Pike	Warren
Erie	Potter	Wayne, and
Lackawanna	Susquehanna	Wyoming
McKean	Tioga	

State of Washington:

Chelan	Okanogan	Snohomish
Ferry	Pend Oreille	Spokane
King	Pierce	Stevens
Kittitas	Skagit	Whatcom, and
Lewis	Skamania	Yakima